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VOLUME ONE

Appendix to the Journal of the Senate

LEGISLATURE OF THE STATE OF CALIFORNIA
1970 REGULAR SESSION

REPORTS

January 5, 1970–September 23, 1970

HON. ED REINECKE
President of the Senate

HON. JACK SCHRADE
President pro Tempore

DARRYL R. WHITE
Secretary of the Senate

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JOINT LEGISLATIVE RETIREMENT COMMITTEE

VOLUME 1 1969 NUMBER 6

REPORT OF THE

JOINT LEGISLATIVE RETIREMENT COMMITTEE

to the

1970 GENERAL SESSION OF THE
CALIFORNIA LEGISLATURE

AB 1672, Chapter 1417, 1963

MEMBERS OF THE COMMITTEE

ASSEMBLYMAN E. RICHARD BARNES, *Chairman*
SENATOR JOHN G. SCHMITZ, *Vice Chairman*

Assemblymen
HARVEY JOHNSON
L. E. TOWNSEND

Senators
HUGH M. BURNS
JACK SCHRADE

DON A. ALLEN, SR., *Consultant*
ROBERTA CHOCK, *Secretary*

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COMMITTEE LETTER OF TRANSMITTAL

Joint Legislative Retirement Committee
California Legislature
January 5, 1970

HONORABLE ROBERT MONAGAN
Speaker of the Assembly

HONORABLE HOWARD WAY
President pro Tempore of the Senate

Gentlemen:

We are submitting herewith to you and to the Honorable Members of the California Legislature the annual report of committee activities in 1969.

The index will indicate the scope of these activities. In addition to the interim hearings reviewed in this report, the Joint Committee was concerned with the supervision of the Peat, Marwick, Mitchell & Co. actuarial valuation and management survey of the Teachers' Retirement System. This study was completed in May of 1969, and copies of the PMM&Co report were distributed to the legislators.

Respectfully submitted,

E. RICHARD BARNES,
Chairman

JOHN G. SCHMITZ,
Vice Chairman

HARVEY JOHNSON

HUGH M. BURNS

L. E. TOWNSEND

JACK SCHRADE

Report of the

JOINT LEGISLATIVE RETIREMENT COMMITTEE

Interim Studies

1969

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HOUSE RESOLUTION 49

Review and Recommendations

On September 12, 1969, the Joint Legislative Retirement Committee met to receive testimony on House Resolution 49, relative to termination of state employees from Social Security coverage. All members of the Joint Retirement Committee were present, plus Assemblymen Alex Garcia and Edwin Z'berg of the Assembly Public Employment and Retirement Committee, who were invited to participate in examination of witnesses.

Although the stated purpose of the hearing was to study the subject of termination of OASDI for state employees, it soon became evident that the features of a particular bill to accomplish termination, AB 1949, were to be presented for examination by the committee. This bill, introduced in the 1969 session, had been amended a number of times, and was finally held for interim study by the Assembly Public Employment and Retirement Committee.

CSEA spokesman, Walter Smith, contended that the bill was intended to accomplish, besides termination of the Social Security contract, the following:

(1) An increase in retirement benefits for members of the Public Employees' Retirement System who do not presently have the coordinated plan;

(2) Equivalent benefits for those whose retirement program is now coordinated, at reduced cost; and

(3) A guarantee clause providing that those who so elect shall, upon retirement, receive exactly what they would have received, had there been no termination.

It was further asserted that all this could be effected at a reduced cost to the state, while maintaining a single, uncoordinated retirement system for all state employees.

The committee has reviewed the transcript of testimony received at the hearing, and examined numerous exhibits pertaining to this subject. A number of points would seem to bear significantly on any decisions that the Legislature might make in this issue. We will discuss them in this report insofar as they relate to the specific proposals to terminate the Social Security contract.

A. First of all, it should be noted that termination would apply to all employees of the State of California and the state's university system, numbering 151,879 in 1968–69. The proposal also affects approximately 200 blind workers in California, and some 40 members of the State Legislature. The blind workers are covered under special provisions of the state's Social Security agreement. State legislators who took office after 1961 and who did not immediately elect to join the Legislators' Retirement System were automatically covered by Social Security.

These latter two groups have been virtually ignored as entities in the discussions. The committee has received no indication that any of these persons have been advised that they will receive absolutely no

equivalent benefits in the event their Social Security coverage is terminated.

B. It was stressed repeatedly by proponents of AB 1949 that adoption of their plan will result in a great deal of saving to the State General Fund. In fact, projected figures cited by the CSEA ranged from $37 million to $122 million in the period 1972 to 1988, based on 1968 salaries and including scheduled tax increases for OASDI. Should the wage base be raised from $7,800 to $9,000, the greater saving figure would be realized, according to the CSEA.

The consulting actuaries hired by CSEA to prepare an analysis and costing of AB 1949, the firm of Milliman and Robertson, Inc., explained the major source of saving to the General Fund. They pointed out that if Social Security contribution rates continued as scheduled, with no change in that financing system, "then Social Security benefits could be provided by the state at less cost to the state than the normal employer Social Security taxes.

"The cost is less because of the forfeiture of contributions and benefits by employees on termination—this does not occur under the Social Security system since the employee normally moves to other employment also covered by Social Security. Thus, the state could save by withdrawing from Social Security and providing the same benefits including future changes through the state plan. It should be made clear, however, that such savings is at the expense of loss of benefits by employees terminating from state service."

The forfeiture referred to here is the $12-per-month mandatory charge made, under provisions of the proposed bill, against all employees who are presently coordinated and to all new employees after the effective date of the bill. These amounts are not refundable upon withdrawal of contributions, and are not counted as part of the employee's interest-drawing account.

Specific provisions for receiving the dependent and survivor benefits purchased by the $12 charge are set out in Section (K) of this report. But at this point the committee would like to stipulate that the concept of penalizing state employees with a loss of retirement benefits if they do not continue working for the state until retirement is foreign to the continuing policy of the Public Employees' Retirement Board. It has also not been part of their basic policy to seek to reduce the cost of retirement for either the State General Fund or the Retirement System at the expense of the individual employee.

Current experience is that some 25,000 state employees separate each year from public service and withdraw their contributions from the Retirement Fund. In fiscal 1968–69, 25,419 state employees withdrew more than $37 million in accumulated contributions. These fairly typical figures illustrate the fluid population of public employees, particularly within the first four years of employment. The PERS management recognizes that continuity of protection is important for the many employees who move from job to job, in and out of public employment, and states that Social Security coverage is a significant factor in recruitment.

C. It is also difficult for the committee to perceive any saving to the employee under AB 1949. For those who are now coordinated, and for all new employees, there is the mandatory, nonrefundable $12-per-month charge, whether the survivor benefit is wanted or not.

For those electing the "guarantee clause" there is the nonrefundable difference between what the cost of the program would have been if there had been no termination, and what it costs for the provisions of AB 1949. Furthermore, every time the Social Security rate is increased, the contribution rate to PERS is automatically raised.

No one can tell what the exact costs of the "guarantee clause" would be, nor those of the "Medicare-comparable" health benefit, for example. But whatever difference develops between what would have been the cost under the coordinated plan, and the cost of the new program, the employee is charged for that cost and can't ever get those amounts back, even if he quits and withdraws his deposits. On top of that, every employee would immediately begin to pay 11 percent in addition to his current contribution rate, for the 1/54 formula.

The committee finds it hard to believe that every state employee—or even every member of the CSEA—has a complete understanding of the program advocated by that organization, with its attendant costs and the conditions for receiving the benefits. These features of AB 1949 are touched on more specifically in Items (J) and (K) of this report.

D. The complaint that all employees entering state service after 1961 had no choice but to accept the coordinated plan, is not answered by this bill. It is noted that several of the provisions of AB 1949 are automatically applied to all new entrants after the effective date of the bill, including a blanket 11-percent increase in the retirement rates plus the cost of some AB 1949 benefits. This does not compare favorably with the current Social Security contribution rate of 4.8 percent on a $7,800 wage base.

It was asserted by the CSEA that some employees who are now members of the coordinated plan were urging termination of the Social Security contract with no guarantees and no equivalent benefits whatsoever, simply a return to the original basic plan. It appears to the committee that the bill proposed does not serve these interests at all, because all members now on the coordinated plan, and all who subsequently are employed by the state, are mandatorially obligated for the $12-per-month contribution for Sections 12 and 12.1 of the bill. This charge is not refundable, and it is of no value to any employee who has no wife, dependent children or surviving parents who might receive the benefit. The large numbers of state workers who separate from employment annually must therefore forfeit $144 per year of their contributions, even if they elect to withdraw the balance from the system, in which case that sum has not accumulated any future benefits whatever, in either Social Security or in PERS.

Thus, not only are the costs increased, and the provisions mandatory, but there is no possible portability of benefits in the event of separation from state service. This raises the question of equity for all employees and not just for those whose situation in life and in the economy prompts a continued, unbroken lifetime of employment in state service.

E. Mr. Smith stated that it has been the CSEA's official policy since 1967 to terminate the Social Security contract and to increase benefits. However, the committee does not consider that this policy position is indicative of the understanding and wishes of all, or even a majority, of their own membership. And this does not take into

account those many employees who are not CSEA members. Certainly the written and verbal communications received by the committee, as well as the personal representation at the HR 49 hearing, indicate clearly that there is a strong diversity of sentiment among public employees on this issue.

The CSEA has cited the results of polls conducted among their membership as support for their policy to terminate Social Security coverage. In the matter of relying on these poll results as a basis for making a decision of this magnitude, the committee is not convinced that each and every state employee was fully apprised of the proposition and its many ramifications. Further, of those who did reply to the single-question inquiry, it cannot be determined what their status was in the retirement program at the time, nor on what information basis their response was made.

It is clearly indicated that the decision to contract for Social Security coverage in conjunction with the public system was not made on the basis of a poll response. The Public Employees' Retirement Board resolved on January 30, 1959, after lengthy deliberation, to contract for Social Security benefits for these basic reasons:

(1) It was in the interests of providing adequate retirement, survivor benefits, additional death and disability benefits, and increased retirement allowances, at a reasonable cost to governmental employers and employees.

(2) The diverse pattern of coverage evidenced under integrated systems held by many contracting agencies under the state and county systems, for some 60 percent of their public employees (over 3 million individuals), was meeting their retirement needs well.

(3) The integration plan would be conducive to the orderly development of an overall program to preserve continuity and protection of retirement, and survivor and other benefits to the greatest extent possible for all state employees.

At that time the state made a substantial contribution ($18.92 million) which was matched by those employees electing coverage and picking up prior wage credits. Since that time a considerable investment in Social Security has accumulated ($27.93 million in state contributions in 1968–69). All individuals who entered state service since 1961 have done so in the awareness that they would make OASDI contributions and receive credits to their Social Security accounts.

Therefore, the committee concluded that responses to informal polls of members of one employee organization was the least valid justification for basing such an important and encompassing decision.

F. The proposed plan, in AB 1949, would not benefit the greater number of state employees. The loss of portable Social Security credits, for example, affects some 25,000 employees each year who move out of state service.

Those employees who continue to work for the state after termination would find their Social Security accounts remaining static, without continuing to build wage credits. At point of retirement the number of years during which they were not covered by Social Security would reduce the average monthly wage figure used in computing the retirement allowances for themselves and their families.

Furthermore, the Social Security disability benefits for themselves and their families begin to diminish, and eventually disappear after five years without contributions. Survivor protection also diminishes, and may disappear in the event of less than fully insured status.

AB 1949 provides that a member must be employed for five years before being eligible to draw disability benefits, and 18 months after separation (leaving contributions on deposit) he loses the benefit. Thus it is possible for shorter term employees to find themselves with insufficient or no coverage should the need arise.

It would appear that a single, noncoordinated retirement plan under the Public Employees' Retirement System is most beneficial to women whose husbands have Social Security coverage in other employment; to individuals who have acquired the maximum quarters of Social Security coverage prior to or concurrent with their state jobs; and to those who are "career employees" in the sense that they begin state employment at an early age, steadily improve their position status to attain a high salary for at least three years, and maintain continuous service until the normal retirement age.

The coordinated program (Social Security plus the PERS plan) is most favorable to employees who move in and out of state employment; for unmarried women; for those married women whose husbands do not have Social Security coverage; and for women married less than 20 years whose claim upon the spouse's account is eliminated by divorce.

G. It is a premise of the California courts that once a basic retirement plan has evolved between employee and employer, the employer has an obligation to at least continue that relationship. Withdrawal of an option or benefit must be replaced by an equal or better benefit. Thus it becomes imperative that the Legislature avoid the impulsive introduction into retirement law of features whose costs cannot be clearly projected.

This would appear to be a difficulty with AB 1949, and its predecessor AB 1339. Proponents of the bill stipulate that employees may contribute on the basis of securing a "guarantee" of benefits equaling those in Social Security. Despite the "equal or better" posture of recent decisions, it is impossible to predict whether the courts would indeed insist on a literal, dollar-for-dollar comparability should a suit be presented at some future time. Unless, that is, the law specifically outlined the relationship and named the particular benefit referenced.

Actuarially, this would place PERS in an untenable position since it is impossible to project accrued liabilities which are tied to the federally supported system. There arises a question of constitutionality in determining whether the public system could maintain the required reserve level under such an "open-end" obligation.

The Social Security law provides for the termination of coverage by a group, such as the state employees. It also provides that once such a termination has been accomplished, that group may never again be granted Social Security coverage.

If "Medicare Plan A" were available without the Social Security tie-in, then many of the retirees' demands could be met with this as a supplement to their state retirement plan. However, it cannot be predicted when if ever such a provision might be approved by the

Congress. Further, there is no way of foretelling whether such legislation would permit groups to contract for this special Medicare coverage if they had previously withdrawn from full coverage.

H. It is extremely doubtful if the state could, or should, attempt to support a "mini-Social Security system" for its employees. As testimony indicated, the federal program is feasible in its present form only because (a) membership is compulsory for all employed persons; (b) there are no refunds of contributions; (c) it is financed so that current benefits are paid from current contributions; (d) with the sponsorship of the federal Treasury it is not necessary to maintain an actuarial reserve to fund the system; and (e) it is not intended to provide a retirement allowance that will fully maintain the living standards of the recipient, but to provide a basic minimum income which the individual can build a more comfortable retirement income.

Several increases in benefits have been voted by the Congress in past years, and it is anticipated that one of the numerous plans being advanced for automatic annual increases will soon be approved. The Medicare provision, geared to the individual need, with a current estimated cost of $30 per person per month, is a benefit that has not been matched by private or public retirement plans. Under Social Security, the Medicare, disability and survivors protection relate, as do the basic benefits, to current wage levels and standards.

Social Security benefits are paid to retirees regardless of other nonsalary income. This encourages individuals to purchase supplementary insurance, contribute to a public pension plan, or in some other way provide for themselves a better standard of living after retirement.

While an employee may never withdraw his contributions from Social Security, he is assured that upon reaching retirement age his accumulated contributions, plus those of his employer, will provide a monthly allowance.

An employee who ceases working for the state before he has accumulated $500 in his retirement account is automatically refunded the total amount (excluding the $2 per month paid for survivor benefits), plus accrued interest. With $500 or more in his account, he has an option of leaving the account intact until he reaches retirement age, or he may withdraw his contributions. Withdrawal severs all responsibility on the part of the state to provide a future benefit.

Withdrawals are advantageous to the funding of the retirement system because they eliminate the state's obligation to match these contributions at some future date to pay a benefit. They keep the costs of the program lower than they would otherwise be. The effect on the employee is that he has the lump sum of savings for his own use if he desires, and he has no possible future claim upon the state.

I. There are additional advantages to maintaining a coordinated retirement plan which are most visible to the individual employee when he reaches retirement age.

Social Security schedules favor the low-income contributor. Public retirement systems, with benefits calculated according to the highest three years of salary, are weighted to favor the high-income employee. Thus it is considered valid and beneficial to the broad spectrum of salary levels to provide a combination of the two features in a co-

ordinated program. This includes Medicare and certain survivors' benefits not available in the state system.

The coordinated program is especially important for individuals who find it difficult or even impossible to save money during their working years, or who choose not to purchase insurance protection for the future. State employees under the coordinated plan maintain their Social Security accounts intact, and in addition may elect to leave their contributions in the public retirement fund for a future benefit, even if they do not stay in public service for their entire careers. If they do withdraw PERS contributions, they still have not endangered any future Social Security benefits which may accrue upon reaching retirement age.

J. Section 15 of AB 1949 provides that PERS must contract for a health program for retirees and annuitants age 65 and over, who are not eligible for Medicare. No cost figures have been attached to this benefit, nor is it known how many individuals would receive it. It is stipulated that the plan selected must be "comparable to Medicare," rather than equivalent to Plan A. The terminology is too general for the committee to reach a determination of the costliness of this item.

K. The following are the provisions of AB 1949, as presented by Walter Smith of the CSEA. The letter "G" indicates items that are part of the "guarantee clause," and the "$12" refers to those sections which are mandatory, nonrefundable monthly charges made to currently coordinated employees and to all new employees.

1.			Terminate the Social Security contract for all employees of the state and the university system, the blind workers and some state legislators. (NOTE: None of the benefits of this program will apply to the blind workers and state legislators. See Item A of this report.)
2.			11 percent increase in retirement benefits. (NOTE: Employee's share of the new 1/54 formula for basic allowance is funded by an 11 percent increase in contribution rates.) Sec. 21251.142.
3.	G	$12	$90 per month annuity to spouse at age 65, of retired or disabled member. Sec. 21265.
4.	G	$12	$90 per month allowance to dependent child of retired or disabled member. Sec. 21266.
5.	G	$12	Increase in 1959 survivor benefit. Sec. 21382.1.
6.	G		$200 supplemental benefit for totally disabled member. (NOTE: Member must have five years of state service; benefit is offset by Workmen's Compensation payments.) Sec. 21301.
7.	G		Increased lump sum death benefit ($750) to active and retired members. Sec. 21367.5.
8.			Health benefit similar to Plan A of Medicare for those retirees not eligible for Medicare.
9.	G		Guarantee clause, promising that retirees will receive "equivalent benefits" to those they would have received had they continued in the coordinated plan. (Note: This provision is optional and must be elected within 90 days after operative date of the bill. (Increases in Social Security contribution rates will automatically reflect in employee contribution increases for the guarantee. (Should the employee separate from state employment and later return, his guarantee provision freezes at the point when his separation occurred and he may never resume it. Any subsequent allowance increases which Congress might vote will not accrue to this employee, nor to any employee after the date of his retirement.

(These benefits are payable only to those who retire from PERS. (See Item L of this report, dealing with the survivor benefit, for exceptions to this stipulation.)

(Members electing the guarantee will pay all they are now paying, including the Social Security tax rate, plus 11 percent. If the Social Security rate increases, employees' cost rises automatically.

(Members now coordinated who do not elect the guarantee will pay all they are paying now, plus 11 percent, plus $12 per month for provisions (3), (4), and (5).

(The nonrefundable portions of the employee's contributions are either the $12 per month, or the difference between what the old program would have cost and the cost of the new program).

L. It is useful to consider saparately the "survivor benefits," and to compare this feature as it is provided by AB 1949, by PERS within the present coordinated program, and by the Social Security.

AB 1949 Benefit

Section 12.1 of the bill provides for the $12 monthly contribution to fund code Sections 21265, 21266, and 21382.1 which stipulate:

(1) Payment of $12 per month per member as a nonrefundable contribution, to purchase an allowance of $90 per month to the spouse of a retired or disabled member, an allowance of $90 per month to the dependent child of a retired or disabled member, and increased survivor benefits. These payments are (a) reduced if the member made contributions for less than 20 years, and (b) offset by OASDI allowances payable.

(2) An actuarial review shall be made at least every four years, to determine the cost of the three above benefits. If the review shows that the member is contributing more than 50 percent of the cost of those benefits, his contributions will be reduced to the 50-percent level. Under conditions of this bill, the employee's monthly contribution would never be higher than $12, even if the costs of the program were to rise above expected levels, unless the law were later amended.

(3) The $12 charge is mandatory for members now coordinated with Social Security, and for all new members after that date. The three benefits are optional to those not now on the coordinated plan; they may elect such coverage within 90 days of termination.

Section 12 provides the series of survivor benefits to replace the "1959" survivor benefit. It increases the allowance amounts, and gives a payment for the death of an active member, for death within 18 months after leaving state service (leaving contributions on deposit), or for death after retirement if credited with 20 or more years of service following the date of termination of Social Security. (There is no benefit payable where death occurred before the termination of Social Security.)

"1959" Benefit

When the "survivor benefit" was offered in 1959, and again in 1961, employees elected the option. All new employees after effective dates of the bills were covered mandatorially. Social Security coverage for state employees, on a coordinated basis with the PERS program, began January 1, 1962. At that time, employees who elected Social Security—including that program's survivor benefit—were no longer covered by

the "1959" benefit. All new employees after January 1, 1962, were mandatorially covered by Social Security.

Thus there are state employees who (a) did not elect the "1959" benefit nor the Social Security—this is a diminishing group; (b) did not elect the "1959" benefit but did elect Social Security; and (c) elected the "1959" benefit but declined Social Security. All other employees, who became members since January 1, 1962, are mandatorially members of the coordinated program.

Figures as of 6/30/69 indicate:

Total state employee members of PERS	153,535	
Total university employee members of PERS	15,188	
	168,723	100%
Total state employees with Social Security	102,560	
Total university employees with Social Security	4,592	
	107,152	63.5%
Total state employees with "1959" survivor benefit	31,678	
Total university employees with "1959" survivor benefit	6,065	
	37,743	22.4%
Total employees with either Social Security or "1959" benefit	144,895	85.9%

(NOTE: The only members in state service who are not eligible by law for Social Security coverage are 5,500 Highway Patrol members (as of 6/30/69) who have no Social Security coverage.)

The "1959" benefit is funded by a $2 contribution which is not refundable nor is it calculated among the employee's "normal" contributions for interest accrual. Benefits are paid to surviving wife or surviving dependent spouse, and dependent children. (If contributions are withdrawn upon separation, there is no further residual benefit.)

Social Security Benefit

The Social Security contribution for the survivor benefit is never refundable under any circumstances, but a benefit accrues to the worker after 1½ years of work and payment of contributions, increasing in value as long as payments are made until a maximum is reached. After the maximum level has been reached, this benefit will not diminish even if the individual ceases to work in covered employment.

M. It was the conclusion of the PERS management that AB 1949 defied realistic administration, clear understanding, and lucid explanation. Obviously, it is imperative that their staff be able to understand all of its ramifications, options, costs and benefits, and be fully capable of explaining these facts to inquiring members.

Although proponents of the bill asserted that the problems were not insurmountable, the committee feels that it can rely on the experience and integrity of the staff and officers of the retirement system, as their testimony demonstrated some of the difficulties involved with the complex provisions of the bill. It seems that a cleaner, neater, less complicated approach to betterment of benefits can be taken, not only to make administration more feasible, but so that the employees themselves might be able to clearly understand their options.

For example, costing of the guarantee clause under AB 1949 was impossible because it was tied in with any future actions which the Congress might conceivably take to change the funding or benefit levels of the Social Security. One serious aspect was that when there was a contribution rate change, the state employees would be automatically charged a similar increased amount, but in the event of a simple, across-the-board increase in the Social Security payment schedule, the PERS would acquire an identical obligation to retirees without receiving any additional money to fund it. The recent 15-percent increase in payments to Social Security beneficiaries and retirees which Congress voted to grant is a case in point.

The three items purchased with the $12 monthly charge are offset, at time of payment, by wage credits on deposit with the Social Security. Payments actually made are dependent on wage credits earned in state service where the total wage credits include both state and other service. This means that at the date of retirement of any member who had ever had the coordinated plan, statements must be received from Baltimore and an evaluation be made of those credits earned in state service. Adjustments would be made, further, based on the status of his guarantee clause, in the event that he did not continue in unbroken state service until retirement. Impairment is a spectre that can never be completely dispelled in these situations, despite assurances to the contrary at the plan's inception.

N. If state employees were truly and knowledgeably desirous of terminating their Social Security contract, the committee feels a more rational approach to replacement of these benefits might be taken. Instead of trying to buy support of termination with promises of benefits "equivalent" of "comparable" to the Social Security plan, a possible and certainly more realistic avenue might be that suggested by William E. Payne, Executive Officer of the PERS:

> "My conclusion is that rather than try to build into this retirement system a complete substitute for Social Security—in other words, translate into the retirement system the Social Security program and guarantee the Social Security benefits—that we take a look at the retirement system and see what we can do to achieve some comparability with Social Security with some realistic understanding. . .
>
> "It can be done by increasing to somewhat near Social Security level the death benefit before retirement. It can be done by increasing the death after retirement benefit under the system to something approaching Social Security coverage, or as good as. It can be done by means of Mr. Barnes' recent legislation to provide a cost-of-living program for the employees, on a permanent basis. . .
>
> "Then it would seem to me that if there are dollars left over, then you would look at the basic benefit formula, and if you wanted to increase that, you would. But I would say, do it clear cut within the system, rather than manipulating to arrive at comparability with Social Security and following what the Social Security benefits do."

Committee Recommendations

Based on the facts and conclusions set forth in this report, and on much more information presented in testimony at the hearing and communicated to the committee in connection with the proposed bill, it is recommended:

1. That there be no termination of the contract with the Social Security Administration by the Public Employees' Retirement System.

2. That continuing efforts be made to improve the benefit program of the PERS, with particular attention to cost-of-living increases.

HOUSE RESOLUTION 403

Review and Recommendations

At a hearing on December 15, 1969, the committee received testimony on House Resolution 403. Senator Schmitz and Assemblyman Johnson were present, with Senator Schmitz presiding.

This resolution called for a study of the feasibility and advisability of coverage under OASDI of that service performed by California teachers which is not included for credit in the State Teachers' Retirement System. Such work includes teaching in summer school and adult education classes, is termed "overtime," and therefore does not accrue additional retirement credit for the teachers.

Information received from representatives of the Social Security Division of PERS and the Teachers' Retirement System revealed the following:

The law as it now stands permits an administrative decision by the school districts to apply for this type of Social Security coverage. A majority of those teachers who would be affected must first indicate their desire for this coverage. After that, the option rests with the school boards, which may or may not apply for the coverage.

In principle the State Teachers' Retirement Board favors coverage of such overtime teaching by the Social Security, which would permit teachers to accumulate Social Security benefits through their own diligence in working beyond the regular school year, as they might do in any private industry.

However, two basic problems emerge as obstacles to the administration and equitability of such programs: (a) There is no standard hiring procedure among districts in the state; and (b) it is therefore impossible for the STRS to keep accurate records of creditable teaching service.

For example, some districts stipulate a six-hour day as regular service, with extra activity such as football and drama coaching, band directing, etc., as overtime. Others contract to cover all such related activity as part of the regular day. Still others provide for two hours of daytime teaching, with two or three hours of adult education in the evenings, terming the total as regular time. In some cases teachers may be hired in the spring to complete a school year plus teaching a summer session, with the contract stipulating that the entire combined service comprises one regular year for crediting purposes. And there are many other such practices and exceptions which deviate from the so-called "normal" school year when counted for retirement credit.

In attempting to equalize these divergent practices, the STRS considered a proposal that all service during any school year would be creditable service and those teachers must pay deductions from their salaries. However, the part-time teachers then became victims of inequities in the contribution and benefit scale.

It was recognized that a solution could only be reached when the Department of Education institutes a standard contracting procedure throughout the state. This would make visible the exact nature of all

teaching service—whether it is regular day service, night school, or summer session.

Lacking any other alternatives under the current benefit structure, the Teachers' Retirement Board has recommended that the current practice be continued—regular daytime teaching is creditable for retirement purposes, and evening and summer school teaching is not. However, upon the implementation of the proposed revision in benefits and financing of the Teachers' Retirement System, the new survivor and disability provisions will be so favorable that teachers will not need the Social Security benefits which they now seek.

The cost factor is another serious consideration. The districts would be required to pay 4.8 percent of the covered salaries, to match the teachers' contributions to Social Security, in addition to the regular STRS contributions. After the proposed revised contribution scale goes into effect, the districts would be paying (after five years) 8 percent of payroll to the STRS for basic benefits. It is probable that there would be few districts in the financial position of being willing to fund the additional Social Security contributions as well

Committee Recommendations

In view of these elements of the problem, the committee recommends:

1. That the districts which are presently contemplating the inclusion of Social Security coverage, for overtime teaching, should delay their final decision until the STRS revision bills can be heard in the Legislature.

2. That the Department of Education should proceed immediately to establish a uniform contracting procedure to apply to all district hiring in California.

3. That the Teachers' Retirement Board should communicate with all of the districts regarding the ramifications of cost and administration which would attend such Social Security coverage. The committee feels that if there is a clear understanding of the problems involved, and the alternative solutions now under consideration, the school boards will voluntarily delay their decision for a year.

STATE TEACHERS' RETIREMENT SYSTEM LEGISLATIVE PROGRAM

Review and Recommendations

The second agenda item at the December 15, 1969, hearing was a presentation of the legislative program developed by the State Teachers' Retirement Board. Mr. Michael N. Thome, Chief Executive Officer of the STRS, and Mr. Davis H. Roenisch, actuary with the firm of A. S. Hansen, Inc., presented the program to the committee.

Testimony was rather lengthy, and justifiably so since the subject is complex and comprehensive, having to do with a basic restructuring of the financing and benefits of the Teachers' Retirement System. Persons interested in a more detailed explanation than is contained in this report are directed to study a transcript of the hearing which is available from this committee, and the "Report to the Teachers' Retirement Board on Financing and Benefit Improvements" issued by the STRS offices on October 17, 1969.

For purposes of this annual report, however, a brief résumé of the testimony indicates the following:

1. It is generally recognized that the "pay-as-you-go" financing of the State Teachers' Retirement System is unsound by any actuarial measurements, and further that the state's obligation to pay annual benefits is rapidly approaching an intolerable figure. Mr. Thome stated that on June 30, 1966, the unfunded accrued liability for the system was in excess of $3,615,000,000, which was roughly equal to the total bonded indebtedness of the State of California. By 1994 they estimate an annual appropriation from the General Fund of a half-billion dollars, and shortly after the turn of the century the projected figure is one billion dollars for payment of benefits in force.

2. This problem has been recognized in earlier times, with statements by fiscal committees reflecting such warnings in 1919, 1924, 1929, and 1935. In 1944 there was an attempt to put the system on a funded basis, but the efforts were unavailing, and the solution to the compounding debt accumulating to the state remained undiscovered.

3. Teachers have experienced keen disappointment in recent years that their allowances have not been improved with automatic cost of living increases, and that other desirable benefits have not been effected. Legislators have found themselves in the unpopular and regrettable position of voting no on such bills because of the danger of adding weight to an already toppling load of state debt because of the system's funding procedure.

4. The firm of Peat, Marwick, Mitchell & Co. was retained by contract with the Legislature to conduct a management survey of the Teachers' Retirement System, and to perform an actuarial valuation to give a clearer picture of the system's fiscal position. As a result of those studies and recommendations, the management of the STRS was completely revised and their Retirement Board began to examine

the possibilities for a more effective approach to benefits and financing.

5. After nearly a year of concentrated effort, the Teachers' Retirement Board and their actuary, Mr. Roenisch, have developed a restructured program for improving benefits and for putting their system on a sound financial basis. The following are basic points in this program:

Improved Benefits

a. The program is designed to meet realistically the needs of the two distinct groups of active teachers to be considered (approximately half are under age 40, and half over that age). The younger teachers with families are principally concerned with survivor and disability benefits, and the older teachers are looking toward receiving adequate retirement benefits, with provisions for maintaining a standard of living.

b. The proposal incorporates a "replacement of income" concept so that a disabled teacher, for example, will still be able to maintain his family during their growth years. A fatherless family, similarly, would receive a replacement of his income during the time of their dependency. The teacher's widow at age 60, even if a family benefit was paid in earlier years, could receive an allowance or withdraw the balance of the teacher's contributions.

c. Retirement benefits would be calculated on the basis of 2 percent of the highest three years of earnings, so that a 30-year teacher would receive 60 percent of high salary upon retirement.

d. An automatic annual increase of 1½ percent of the original benefit would assure the teacher of at least partial protection against inroads in his income after retirement. This is related to any government cost-of-living index, but is constant regardless of changes in the economy.

e. Teachers who retired prior to 1965 would also receive the 1½-percent increase to make up for the inflationary effects on their income during the past six years. Their total immediate increase, then, would be 9 percent of their benefit in 1965.

f. There would be minimum allowance payable of $10 per month for each year of service, so that those few teachers now receiving extremely low benefits would have more reasonable retirement income.

Financing Provisions

a. Payments for disability would be offset by any other public benefits which the teacher might be eligible to receive, such as Social Security.

b. There would be a flat contribution rate for all teachers of 8 percent of salary. (Currently, teachers contribute varying amounts averaging 7.4 percent.) This practice would save some $300,000 annually in administrative costs.

c. The school districts would increase their contributions at the rate of 1 percent each year until a level of 8 percent of payroll is reached. This money would be payable at the same time the

teachers' share is paid, so that all could be invested throughout the year. (The current practice is for the school districts to contribute 3 percent by law—actually less than this because of tax limitations—at the year's end to help pay benefits in force. Also, they pay $12 per year per member for administrative expenses.)

d. The State General Fund would be obligated for a contribution of a flat $125 million for the next 30 years, at which time its obligation to teachers currently retired would be amortized and no further state contributions would be required. The system would then be funded by the combined contributions of teachers and school districts, and investment income.

6. The STRS is presuming a 6-percent interest rate on investments. This is considered conservative, and it is expected that if California's voters approve a proposition in the November elections to allow the system to invest in common stocks, a greater increase level will be realized.

7. Indications are that the groups most vitally concerned with this program are in favor of this approach. Representatives of the California Teachers' Association and the Retired Teachers' Association (by formal resolution), and the School Boards Association (unofficially) have expressed a favorable reaction to the proposal.

Committee Recommendations

It is recognized that in these times of increasing tax burdens for all purposes, there are real problems in providing the financing for this, as for any, benefit program. However, the committee feels that these challenges can be met, the problems solved, and the funding provided.

The alternatives are to simply continue as we have done, until such time as the annual appropriations for retirement become a major budget item. At that time it will be too late to take the remedial measures which are so obviously indicated.

The Legislature cannot long resist the efforts of teacher organizations for a betterment of their benefits. And it is not fitting that we should do so, thus penalizing an important segment of our society by relegating them in their senior years to a substandard retirement income.

The committee, therefore, recommends that the Legislature study carefully the proposals of the State Teachers' Retirement Board for improving benefits and restructuring the financial provisions of the State Teachers' Retirement System.

The committee urges the members to inform themselves of the facts surrounding this grave situation, so that their decisions when voting on the bills to implement this proposal will be based on long-range, far-sighted views of where the STRS and the state stand today, and their positions some 30 or 40 years from now.

Finally, after careful study and a detailed review of the STRS program, the committee recommends its passage by the 1970 Legislature, as one of its most crucial and significant pieces of legislation.

RESTRUCTURING OF THE JOINT RETIREMENT COMMITTEE

Recommendations

In reviewing the processing of retirement bills during recent years, the committee has become increasingly aware that the Legislature has no systematic overview procedure for considering them. Consequently, no single committee of members in either house has achieved the expertise and continuity of background essential to a rational and effective evaluation of changes to the state's retirement laws.

There are six separate retirement laws, controlling the funding of more than one million active and retired public employees. There are some 36 retirement systems, with assets in excess of $5 billion and growing by over one-half billion dollars annually. Legislative changes to any one system ultimately touches all others, either directly or by establishing precedents.

Because many of these laws were the result of special interest efforts for individuals or groups, the precedents set and the principles established are not only expensive in themselves, but set tempting goals for which other employees and groups can aim.

The resulting public pension laws are seen to lack uniformity, cannot be readily understood and administered, and are prone to inequities in individual application. The projected growth in public employee population, retiree rolls, dollar value of pension funds, and prospective benefit improvements, all make it imperative that the government re-evaluate its approach to further retirement legislation.

The courts have ruled that once a benefit is established in law, it can only be replaced by an equal or better benefit. It is, therefore, vital to the stability and integrity of these retirement funds that expert costing and evaluation be made of the potential accrued liability of each bill introduced. Even a relatively small initial cost may prove deceptive when valued in terms of the long-range obligation. For example, costing of a benefit improvement for a particular group frequently fails to reflect the impact of new retirees, who will also receive the added amounts and thus increase the state's liability. Another deficiency relates to short-range projections of dollar cost, rather than revelation of the true actuarial accrual of debt for the coming 30 or 40 years.

Committee Recommendations

To meet the needs of the Legislature for a reliable costing of bills, development of an expertise for reviewing retirement proposals, and to overcome the effects of emotion and oratorical appeal which have heretofore dramatically influenced judgment on retirement bills—the committee recomends that:

1. The Joint Legislative Retirement Committee, which was established by statute in 1963 to review and study retirement proposals, should be restructured and directed to analyze each and every piece of retirement legislation introduced each session.

2. The committee should hold no public hearings, but should perform objective evaluations of these bills with the assistance of a professional actuary.

3. An advisory group of professionally qualified persons from the pension planning and actuarial fields should be appointed to assist the committee in reaching accurate determinations.

4. The executive and legislative departments of state government, with the management of the public retirement systems, should accept the proposed role of the Joint Retirement Committee in providing expert analyses and soundly based recommendations on retirement bills introduced each session.

After a careful review of the successful experience of such review bodies in Illinois and Wisconsin, as well as in a number of other states, the committee feels that this procedure would provide the Legislature with the necessary tools to accomplish a more orderly and comprehensive assessment of the retirement proposals which come before it.

The committee further recommends that such a body be established soon, before the already burgeoning state obligation for benefits to public retirees becomes a major item in the annual state budget.

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CALIFORNIA LEGISLATURE

JOINT COMMITTEE on OPEN SPACE LAND

FINAL REPORT

HON. JOHN T. KNOX, *Chairman*

HON. ROBERT J. LAGOMARSINO, *Vice Chairman*

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EDWIN L. Z'BERG	WALTER W. STIERN
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STAFF

JOHN C. WILLIAMSON, *Executive Director*
GERALD D. BOWDEN, *Assistant Director*
PEGGY JAMES, *Secretary*

February 1970

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Reverdy Johnson, *Chairman 1969–70*

California Legislature
Joint Committee on Open Space Lands

Honorable Ed Reinecke, *President of the Senate*
Honorable Robert Monagan, *Speaker of the Assembly*
Members of the Senate and Assembly

Ladies and Gentlemen:

The Joint Committee on Open Space Lands was created by the adoption of Assembly Concurrent Resolution Number 26 during the 1967 Regular Session. The Committee was directed to "analyze all facts relating to the grant of authority conferred upon the Legislature by Article XXVIII of the State Constitution."

During the 1968 Regular Session the Legislature adopted Concurrent Resolution Number 60, which directed the Committee to present a preliminary report during the 1969 session and a final report during the 1970 session. In compliance with that Resolution, the Committee now submits its final report.

The Committee reached general agreement upon most of the matters dealt with in the report. At the same time, some members did not agree with certain of the recommendations contained herein, particularly those dealing with regional responsibilities and state or regional requirements and constraints upon local actions.

However, the members of the Committee recognize that the proposed recommendations represent the results of many months of work by the Citizens Technical Advisory Committee and the Committee staff, aided by many suggestions from interested citizens. The members also recognize that the recommendations comprise a set of proposals consistent with each other, which offer a framework for decision and action to preserve important open space.

Rather than excise those portions with which there was no consensus, and thus deny the Legislature and the public the opportunity to make their own evaluations of the proposals, the Committee has chosen to submit the report in its entirety. Individual members will thus be free to separately state their disagreement with any portion of the report, and to support or oppose proposed legislation.

The failure of the Committee to reach accord on some of the proposals should not obscure the fact that there was majority support for Recommendations One, Three, Nine, and Twelve through Seventeen, inclusive.

The Committee wishes to take this opportunity to thank the members of the Citizens Technical Advisory Committee for their assistance in studying the problems related to open space lands. The legislation enacted pursuant to the Preliminary Report of the Committee and many of the proposals contained herein are testimony to the countless hours spent by them in considering this very serious problem.

Respectfully submitted,

Robert J. Lagomarsino
Vice Chairman
William E. Coombs
Walter W. Stiern
Fred W. Marler, Jr.

John T. Knox
Chairman
John P. Quimby
Edwin L. Z'berg
Clare L. Berryhill

Honorable Ed Reinecke, President of the Senate
Honorable Robert Monagan, Speaker of the Assembly
Members of the Senate and Assembly

Ladies and Gentlemen:

The Joint Committee on Open Space Lands was created by the adoption of Assembly Concurrent Resolution Number 20 during the 1967 Regular Session. The Committee was directed to "analyze all facts relating to the grant of authority contained upon the Legislature by Article XXVIII of the State Constitution."

During the 1968 Regular Session the Legislature adopted Assembly Concurrent Resolution Number 60, which directed the Committee to present a preliminary report during the 1969 session and a final report during the 1970 session. In compliance with that resolution, the Committee now submits its final report.

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However, the [illegible] recommendations [illegible] the California Tech[illegible] by many [illegible] nize that the [illegible] with each other [illegible] to preserve [illegible]

Rather than [illegible] and then [illegible] their own [illegible] submit the [illegible] to separate [illegible] and to supp[illegible]

The failure [illegible] needs should [illegible]

Recommendations [illegible] inclusive.

The Committee [illegible] of the Citizens [illegible] studying [illegible] concerns [illegible] many of the [illegible] hours spent [illegible]

Respectfully [illegible]

Robert J. [illegible]
Vice Chairman
William [illegible]
Walter [illegible]
John W. [illegible]

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INTRODUCTION

The Joint Committee on Open Space Lands was established by the California Legislature at the 1967 Regular Session by the adoption of Assembly Concurrent Resolution Number 26. The Committee was "authorized and directed to ascertain, study and analyze all facts relating to the grant of authority conferred upon the Legislature by Article XXVIII of the Constitution of the State of California, including but not limited to the operation, effect, administration, enforcement, and needed revision of any and all laws in any way bearing upon or relating to the subject of this resolution and to report thereon to the Legislature including in the reports its recommendations for appropriate legislation."

Article XXVIII was approved by the electorate at the 1966 General Election.* It authorizes the Legislature to define open space lands, and to provide, when such lands are subject to an enforceable restriction as specified by the Legislature, that the Legislature may require that they be assessed on the basis of the use to which the land is restricted rather than upon market value.

A.C.R. 26 also instructed the Joint Committee to appoint a citizens' advisory committee to assist the Joint Committee in its work.

A Technical Advisory Committee of outstanding citizens was appointed. Those who have served on the committee are truly dedicated individuals who have given unselfishly of their time and talent in assisting the legislative committee. They have served entirely at their own expense.

During the first year of their work, the Technical Advisory Committee concentrated on changing the California Land Conservation Act (Williamson Act) and the provisions of the Revenue and Taxation Code which govern the assessment of land enforceably restricted to open space uses. The Committee also developed a proposal whereby cities and counties might accept open space easements on land. These recommendations of the Citizens Advisory Committee formed a major part of the Preliminary Report of the Joint Committee on Open Space Lands, and were introduced in the Legislature in March 1969 as Assembly Bills 1175, 1176, 1177, 1178, 1186 and 2305. All six bills were passed by both houses and signed by the Governor. They become law November 10, 1969.

During the past year, the Citizens Technical Advisory Committee has concentrated upon carrying out the broader aspects of Article XXVIII and A.C.R. 26, namely, establishing machinery for protecting the interests and concern of the people of the State in the preservation of its open space lands.

In August of 1969, the Technical Advisory Committee submitted a Semi-Final Report to the Joint Committee. This document consisted of a number of proposals for changes in governmental structure and au-

* See Appendix A.

thority upon which the Advisory Committee desired the benefit of public discussion. This report was widely circulated and three public hearings were held by the Joint Committee upon the suggestions contained therein. These hearings were in San Diego on September 13–14, in Fresno on October 13, and in San Francisco on November 3 and 4, 1969.

After the hearings the Advisory Committee held several additional meetings. Its final report was prepared and submitted to the Joint Committee on January 1970.

This report of the Joint Committee on Open Space Lands largely reflects the recommendations included in the Final Report of the Citizens Technical Advisory Committee. However, it has incorporated most of the principal suggestions for change contained in letters of dissent submitted by several members of the Advisory Committee.

The result is a series of recommendations calling for important changes in the organization and structure of governmental agencies in relation to open space land.

Neither this Committee nor the Citizens Technical Advisory Committee has considered it to be its role to document the need to preserve California's open space lands. One has only to observe the millions of acres of our best agricultural land that have fallen to the bulldozer since World War II to know the fate of additional millions of acres as our population continues to double every twenty to thirty years. One has only to read any daily paper or to hear the statements of responsible public officials to measure the seriousness and depth of public concern over the threats to the State's environment. This Committee's study has convinced all that if we are in fact going to meet the needs of the future, changes in traditional attitudes and methods of dealing with the land are matters of necessity.

The message is clear: *no action now—no open space in the future.*

The Committee has considered its responsibility to be to recommend steps to achieve the desired goals of society in the preservation of open space land, rather than to merely add to the overwhelming evidence of the seriousness of the situation and the necessity for action.

The recommendations contained in this report offer a reasonable and realistic approach to a program of action by individuals and by their governments. The adoption of this program may well be the only way of avoiding more drastic measures in the not too distant future.

CHAPTER 1

GENERAL CONCLUSIONS

In submitting its final report to the Joint Committee on Open Space Lands, the Citizens Technical Advisory Committee stated a series of general conclusions reached after two years of thoughtful consideration of the open space problem. In submitting this report to the Legislature, this Committee endorses these general conclusions of the Technical Advisory Committee and presents them here as our own.

1. While the concern of the State in open space lands may be considered paramount, many of the State's objectives can be achieved through action by local government and private landowners. Nevertheless, good public policy cannot permit the land-use policy of the State to be simply an aggregate of individual decisions made by landowners and local governments without regard to statewide interest.

2. The State's concern with respect to selected areas or categories of land warrants direct action by the state government, either through direct acquisition or control by use of the police power.

3. The general goal of the Committee's recommendations is to assure that all units of government have the authority and the will to adopt and carry out open space policies that are consistent with state objectives and sound conservation policies.

4. Formulation and execution of a land-use policy designed to protect the state's interest in its own development is basic to any effective environmental quality program.

   The importance of land to the total environment is both critical and obvious. The lack of any positive guidance from the state has forced local governments to develop policies without reference to statewide concerns. Failure to articulate the state's interest in rational land use has allowed the private landowner to unduly control the location and timing of the state's metropolitan growth.

5. The basic mechanisms available for the control of land use are those which must be tapped in dealing with other environmental problems. Once the three basic tools of purchase of land by the public, voluntary restriction in land use by the owner, and use of the general powers of government at all levels have been called upon to carry out a comprehensive land-use policy, they could be adapted to achieve other environmental objectives with comparative ease.

6. The importance of demonstrating dramatically a COMMITMENT by the Legislature on behalf of the State to a course of action calculated to ameliorate environmental problems cannot be overestimated.

To do this, the Legislature should now: (1) declare state policy; (2) provide a planning base and sufficient authority to carry out those policies; (3) commit substantial sums of money on a regular basis to finance environmental programs.

7. State policies should not be adopted merely to meet the requirements of federal agencies.

   The intrinsic worth of an open space policy must not depend upon, nor appear to depend upon, the availability of federal funds to carry it out. Policies, plans and programs must possess a defensible significance which is independent of federal grant programs.

8. The need for an assignment of state responsibility and authority is urgent. No state agency now has such responsibility and authority extending beyond its narrow sphere. The State agency given this assignment should have sufficient authority to:

   a. control the policies of other state agencies in carrying out open space policy;

   b. guide policies and programs of local governments without overt state intervention in local decisions to achieve an integrated open space policy.

9. The choice of the state agency to be assigned environmental responsibilities is critical. Such an agency must have sufficient stature and operational capability to deal effectively with other state agencies as well as local or regional entities.

10. There is need for regional bodies to assure the rational coordination of local plans and action. While local open space problems must be solved locally, it is important, also, that local plans be prepared with regional needs in mind. This is only possible by expanding the planning process to include logical planning regions rather than following narrow and artificial political boundaries.

11. Given adequate guidance in the form of state policy, local governments will devise open space plans which, in conjunction with state and regional plans, will achieve the objectives of a comprehensive open space program. There is need to place both responsibilities and restraints upon local government in the implementation of plans and the administration of programs related thereto.

CHAPTER 2

SUMMARY OF RECOMMENDATIONS

1. The Planning and Zoning Law (Title 7 commencing with Chapter 65000 of the Government Code) should be amended to abolish the State Office of Planning and to establish a State Office of Conservation and Development Planning with broad new authority with respect to open space lands.
   (a) In general, this office would:
      (1) Be responsible to the Governor
      (2) Be separate from the Department of Finance
      (3) Provide information to, and cooperate with the Legislature
      (4) Prepare a State Conservation and Development Plan, including an open space program.
   (b) The responsibilities of this office with respect to open space would be to:
      (1) Conduct and maintain an inventory of the state's land.
      (2) Prepare a comprehensive long-range State open space program for adoption by the Legislature.
      (3) Administer statewide programs of financial assistance and open space acquisition delegated to it by law.
      (4) Control development in open space areas designated by the Legislature.
      (5) Review all proposals of state agencies which affect open space land and advise the Governor and the Legislature as to conflicts between any such proposal and the state open space policy and program.
      (6) Advise any agency designated by the Governor or the federal government as state or regional clearing house for proposals requesting federal funds as to the conformity of such proposals or projects with the State Open Space Program and Policy.
      (7) Review and approve regional open space plans.
      (8) Provide relevant supportive information to assist the Legislature in considering the State Open Space Program.
      (9) Perform such other functions as directed by the Legislature.
2. The State Office of Conservation and Development Planning should prepare and the Legislature should adopt a State Open Space Program which:
   A. Identifies specific parcels of open space land which, because of their unique characteristics, are of sufficient statewide importance to justify direct action by the state to assure their preservation.
   B. Defines categories of open space land which are of sufficient importance to the state to require action by local agencies in order to insure the long-range protection of the land.

C. Provides guidelines for use by local government in preserving open space land.

3. The Legislature should adopt a State Open Space Policy that will:

A. (1) Recognize the importance of the state's interest in open space land.

(2) Recognize the need for direct action by the state to preserve selected parcels or categories of open space land.

(3) Recognize that while the interest of the State in open space lands is paramount, many of the state's objectives can and should be achieved through action by local government and private landowners.

(4) Recognize the existence of serious threats to the State's open space lands.

(5) Recognize the need for the policies of all state agencies to be directed toward fulfilling State Open Space Policy.

(6) Recognize the need to design tax policies that will further State Open Space Policy.

(7) Recognize that the continued growth of population demands that cities, counties and the State at the earliest possible date make definite plans for the preservation of valuable open space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations to control land use.

(8) Recognize the need to define the responsibilities of local governments and to provide them with guidance, authority and financial assistance in order that they may adopt and carry out open space plans.

(9) Recognize the interest of the people in orderly urban development.

(10) Recognize that open space land is a limited and valuable resource that must be conserved.

B. Specify relevant factors to be considered by local agencies in preparing open space plans.

C. Encourage cooperation among governmental bodies.

D. Recognize that certain types of open space land have greater value to the people of California as open space than they would have in any other use.

4. The Council on Intergovernmental Relations should assign responsibility for carrying out open space responsibilities in each regional planning district into which the State has been divided pursuant to Section 34216 of the Government Code. This responsibility should be assigned to existing regional bodies in the following order of preference:

A. A general purpose regional government; or

B. Either a voluntary association of governments operating under a joint exercise of powers agreement, or an area planning commission, where such body has been recognized by the federal government for purposes of Section 204 of the Demonstration

Cities and Metropolitan Development Act of 1966 (Public Law 89-754.)

C. A regional planning board activated pursuant to Chapter 2 (beginning with Section 65060) of the Government Code.

D. Any association of counties and cities which the Council considers appropriate for carrying out the necessary functions.

E. The Council on Intergovernmental Relations.

5. The regional agency designated by the state to carry out open space responsibilities within each region of the state should be required to prepare a regional open space plan by January 1, 1973. Each regional plan shall:

A. Provide for the conservation and preservation of open space land within the region;

B. Be consistent with and carry out the purposes of the State Open Space Program and Policy;

6. Each regional agency should review all local open space plans of the region and forward to the local agency its comments on the local plan with respect to matters included in the State Open Space Policy or Program and the regional Open Space Plan.

7. When requested by the local agency, the regional agency should approve the local open space plan if it finds that it:

A. Is consistent with and implements the regional Open Space Plan, and that it

B. Includes an action program setting forth specific programs to be used in implementing the plan.

8. When requested by the local agency, the regional agency should review programs and actions implementing local open space plans and approve them if it finds them to be consistent with an approved open space plan.

9. The Planning and Zoning Law should be amended to:

A. Require that projects of local agencies, including school districts, be required to be consistent with local general plans.

B. Permit cities and counties to adopt specific plans which include regulation of the use of open space land.

10. The Planning and Zoning Law should be amended to:

A. Require that every city and county adopt an open space element of its general plan by June 30, 1973.

B. Require that city and county open space plans contain an action program consisting of specific programs which the board or council intends to pursue in implementing its open space plan.

C. Require that each open space plan adopted by a city or county be submitted to the appropriate regional agency for its comment as to consistency with the State Open Space Policy and Program and regional open space plan.

D. Permit a city or county to submit its adopted open space plan to the regional agency for its approval on the basis of its

conformity with the Space Open Space Policy and Program and the regional open space plan.

E. Provide that cities and counties must seek to fulfill open space objectives and pursue state open space policy.

F. Provide that no city or county may issue any building permit, approve a subdivision map, or adopt an open space zoning ordinance unless the proposed construction, subdivision, or ordinance is consistent with its adopted open space plan.

11. The Planning and Zoning law should be amended to:

A. Require that by January 1, 1974, every city or county adopt an open space zoning ordinance consistent with an adopted open space plan.

B. Require that every open space zoning ordinance or amendment thereto be submitted to the appropriate regional agency for review and comment as to its conformity with the State Open Space Policy and Program and the regional and local open space plans.

C. Require that the law governing the issuance of variances from local open space ordinances be strictly interpreted and enforced so as to protect the interest of the public in the orderly growth of urban areas and in the preservation and conservation of open space land.

D. Provide that any city or county may submit open space zoning ordinances or amendments thereto to the regional agency for approval on the basis of conformity with its approved open space plan.

E. Provide that a city or county by resolution may establish an approved open space ordinance as an enforceable restriction within the meaning of Article 28 of the State Constitution.

12. The Legislature should enact a new law authorizing a city, a county and the owners of land to enter into development planning contracts which would:

A. Provide for the long range planning and staged development of parcels of land adjacent to cities which lend themselves to such long range planning.

B. Provide that land restricted to open space uses pursuant to a development planning contract be deemed subject to an enforceable restriction within the meaning of Article XXVIII of the State Constitution.

13. A county, the appropriate state or regional agency and the owner or owners of land not included within the general plan of a city should be authorized to enter development planning contracts in the same manner and with the same effect as proposed for a city, a county and land owner.

14. The California Land Conservation Act of 1965 (Williamson Act) should be amended to require the Department of Veterans Affairs to execute a contract pursuant to that Act upon the request of a veteran purchasing a farm under its Farm and Home Loan Program.

15. The California Land Conservation Act of 1965 (Williamson Act) should be amended to:
    A. Prescribe a procedure by which a public agency proposing to acquire land within an agricultural preserve for a project extending into two or more counties may request approval of its project of the board or council of the county or city administering the preserve; and
    B. Provide a method by which the public agency, in the event the board or council refuses to give such approval, may seek a court determination of its compliance with Section 51292 of the Government Code which would bar the issuance of a Writ of Mandamus sought pursuant to the Section 51294 of the Government Code.

16. The California Land Conservation Act of 1965 (Williamson Act) should be amended to provide that mail notice of a public hearing need be sent only to the owners of land under contract within the same agricultural preserve and within one mile of land upon which the owner of land is seeking cancellation of his contract rather than to every owner of land within the preserve.

17. The California Land Conservation Act of 1965 (Williamson Act) should be amended to extend eligibility to land open to the public for specified recreational uses.

18. The Legislature should take steps to assure that regular annual state appropriations are made available in an amount which, in addition to funds from local and federal sources, will be sufficient to finance an adequate open space program for California.

    One possible step would be for the Legislature to seek approval by the electorate of a general obligation bond issue to finance a ten year acquisition and maintenance program.

    The exact amount of such a bond issue should be agreed upon after careful study. On the assumption that the State must provide a substantial amount of assistance to cities and counties, and on the basis of the information included in the Urban Metropolitan Open Space Study, the amount of such a bond issue should approximate one billion dollars for expenditures over a ten year period.

19. The Subdivision Map Act should be amended to:
    A. Require cities and counties to require dedication of land or levy fees in lieu of dedication which they are now permitted to require or levy by Section 11546 of the Business and Professions Code.
    B. Permit such land and fees to be used for open space purposes other than parks and recreation.
    C. Require cities and counties to demand similar fees as a condition to granting a residential building permit for multiple dwellings of four or more units where such fees have not been paid in connection with the approval of a subdivision map.

CHAPTER 3

RECOMMENDATIONS

1. STATE OFFICE OF CONSERVATION AND DEVELOPMENT PLANNING

In 1965 a study of California's open space needs was conducted as part of the State Development Plan Program. One of the general findings of that study was that:

> There are many agencies on all levels of government directly or indirectly concerned with land for open space purposes, but there is no single agency with the responsibility for coordination of open space activities and preservation of open space. As a result of this lack of a single purpose agency, every agency leaves it to someone else and it does not get done.*

It has been apparent for many years that the state's failure to control the actions of its own entities has accounted for many of our present difficulties. State government has viewed each isolated program as a microcosm without considering the collective effect of these programs on one another. Historical inertia and resistance to change have combined to thwart all moves to measure the interdependence of state programs and their cumulative impact upon other levels of government.

When a freeway is routed through a local agricultural preserve or park, it has a dramatic effect upon local policies and programs. Similarly, the population which follows the location of such public facilities as colleges and universities can have a significant effect upon the ecological balance of the area. But while these relationships among the various branches of state and local government have long been recognized, there has never been an agency whose function was to unify their action in an effort to protect our open space land resources.

Concerted action by the state will not be possible until a high level agency is given the power to control the action of sibling agencies and departments. Only by achieving this sort of unified state action can local governments reasonably be asked to carry out statewide goals and objectives.

If the State is to fulfill the statewide interest in the conservation of open space lands, it is surely clear that responsibility must be assigned to a single agency, directly responsible to the Governor, with specific duties assigned by the Legislature and with sufficient stature, support and authority to influence the policies and action of other state agencies as well as local governments with respect to open space lands.

Recommendation Number 1

State Office of Conservation and Development Planning

The Planning and Zoning Law (Title 7 commencing with Chapter 65000 of the Government Code) should be amended to abolish the State Office of Planning and to establish a State Office of Conservation

* *Urban-Metropolitan Open Space Study,* Eckbo, Dean, Austin and Williams; directed by Edward A. Williams; California State Office of Planning, 1965, finding 10, P.F.

and Development Planning with broad new authority with respect to open space lands.

(a) In general, this office would:
  (1) Be responsible to the Governor.
  (2) Be separate from the Department of Finance.
  (3) Provide information to, and cooperate with the Legislature.
  (4) Prepare a State Conservation and Development Plan, including an open space program.

(b) The responsibilities of this office with respect to open space would be to:
  (1) Conduct and maintain an inventory of the state's land.
  (2) Prepare a comprehensive long-range State open space program for adoption by the Legislature.
  (3) Administer statewide programs of financial assistance and open space acquisition delegated to it by law.
  (4) Control development of open space areas designated by the Legislature.
  (5) Review all proposals of state agencies which affect open space land and advise the Governor and the Legislature as to conflicts between any such proposal and the state open space policy and program.
  (6) Advise any agency designated by the Governor or the federal government as state or regional clearing house for proposals requesting federal funds, as to the conformity of such proposals or projects with the State Open Space Program Policy.
  (7) Review and approve regional open space plans.
  (8) Provide relevant supportive information to assist the Legislature in considering the State Open Space Program.
  (9) Perform such other functions as directed by the Legislature.

2. STATE OPEN SPACE PROGRAM

It seems patently obvious that if a program of open space conservation is to be commenced with any hope of success, a comprehensive set of plans must be integrated into a cohesive whole. Clearly the state does have an interest in protecting its limited supply of open space land. Advancing that interest can best be achieved by describing the land which must be protected and then providing the means for controlling its use.

The job of defining the categories of open space land and locating the specific parcels which are of statewide importance should be done by an agency of state government which can review the total needs of both state and local levels of government.

In addition, local open space programs will be more likely to contribute to meeting both local and statewide objectives if advice, standards and assistance are provided by the State.

Recommendation Number 2

The State Office of Conservation and Development Planning should prepare and the Legislature should adopt a State Open Space Program which:

(a) Identifies specific parcels of open space land which because of their unique characteristics are of sufficient statewide importance to justify direct action by the state to assure their preservation.
(b) Defines categories of open space land which are of sufficient importance to the state to require action by local agencies in order to insure the long-range protection of the land.
(c) Provides guidelines for use by local government in preserving open space land.

3. STATE OPEN SPACE POLICY

Before the state can direct its own agencies and demand that local agencies protect the state's interest in land use matters, a standard must be set. The Legislature must erect a target for all levels of government. In doing so the state must express the nature and extent of its interest in land use. Conflicting policies must be rationalized and competing programs harmonized.

For the state to articulate its goals and the means of achieving them is for the state to declare its policy on the subject. Such a declaration is necessary in order to pinpoint specific objectives as well as to assign general responsibilities.

Recommendation Number 3

The Legislature should adopt a State Open Space Policy that will:

(a) (1) Recognize the importance of the state's interest in open space land.
(2) Recognize the need for direct action by the state to preserve selected parcels or categories of open space land.
(3) Recognize that while the interest of the state in open space lands is paramount, many of the state's objectives can and should be achieved through action by local goverment and private landowners.
(4) Recognize the existence of serious threats to the state's open space lands.
(5) Recognize the need for the policies of all state agencies to be directed toward fulfilling State Open Space policy.
(6) Recognize the need to design tax policies that will further state open space policy.
(7) Recognize that the continued growth of population demands that cities, counties and the state at the earliest possible date make definite plans for the preservation of valuable open space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations to control land use.
(8) Recognize the need to define the responsibilities of local governments and to provide them with guidance, authority and financial assistance in order that they may adopt and carry out open space plans.
(9) Recognize the interest of the people in orderly urban development.
(10) Recognize that open space land is a limited and valuable resource that must be conserved.

(b) Specify relevant factors to be considered by local agencies in preparing open space plans.

(c) Encourage cooperation among governmental bodies.

(d) Recognize that certain types of open space land have greater value to the people of California as open space than they would have in any other use.

4. REGIONAL OPEN SPACE RESPONSIBILITIES

The trend toward urban growth on a regional scale has severely taxed the ability of local governments to meet new problems. Increasingly, many local problems must be made within a regional context. Undoubtedly, there remains strong sentiment in opposition to regional planning and control, particularly in certain areas of the state. But the political acceptability of a solution has no bearing upon the nature of the underlying problem.

Since our planning problems so demonstrably cut across discrete local political boundaries, the responsibility for directing local actions for the mutual benefit of each resident of the region belongs with the state itself. If the cities and counties which comprise a region are unable to meet regional needs, it is incumbent upon the state to act directly.

There are in California fifty-eight counties, more than four hundred cities, and more than four thousand special districts. It is unrealistic to assume that these factionalized entities of local government can successfully safeguard the state's interest in open space conservation. It is probably unrealistic even to assume that the state's interest can be made known to each of these entities. The sheer mechanics of communication dictate that a more manageable approach be taken. If only for the purpose of providing an initial framework for local consideration of regional problems, dividing the state into rational planning regions is logical.

The planning law already charges the Council on Intergovernmental Relations with dividing the state into regional planning districts. While this has been done, no action has been taken to activate regional planning bodies in most of such districts. It is the view of the Committee that the local governments in the region should be given the greatest latitude in establishing a single responsible regional planning body within each regional district and that until this is done, the State should exercise such responsibility within each regional planning district.

Recommendation Number 4

The Council on Intergovernmental Relations should assign responsibility for carrying out open space responsibilities in each regional planning district into which the State has been divided pursuant to Section 34216 of this Code. This responsibility should be assigned to existing regional bodies in the following order of preference:

(a) A general purpose regional government.

(b) Either a voluntary association of governments operating under a joint exercise of powers agreement, or an area planning com-

mission, where such body has been recognized by the federal government for purposes of Section 204.

(c) A regional planning board activated pursuant to Chapter 2 (beginning with Section 65060) of the Government Code.

(d) Any association of counties and cities which the Council considers appropriate for carrying out the necessary functions.

(e) The Council on Intergovernmental Relations.

5. REGIONAL OPEN SPACE PLAN

The responsibility for assuring that the state's open space policies are carried out at the regional level rests, in the final analysis, with the state. It is appropriate for the state to delegate this responsibility to some independent regional entity. But this should not obscure the nature of the responsibility.

The State Open Space Program should isolate those matters which are of concern to the state at large in order that they may be reflected in regional actions.

A relatively higher degree of specificity should be expected of regional open space plans than that reflected in the state open space program. The function of the regional plan is to extend the broad concepts outlined in the state open space policy and program. It must also identify those matters which may be of little importance to the state, but which constitute worthwhile goals for the region itself. This twin role of the regional plan will necessitate a fundamentally different approach from that followed at the state level.

Recommendation Number 5

The regional agency designated by the state to carry out open space responsibilities within each region of the state should be required to prepare a regional open space plan by January 1, 1973. Each regional plan shall:

A. Provide for the conservation and preservation of open space land within the region;

B. Be consistent with and carry out the purposes of the State Open Space Program and Policy.

6. REGIONAL REVIEW OF LOCAL PLANS

This report does not contemplate the creation of any general governmental responsibilities at the regional level. It does contemplate the establishment of close working relationships among local governments and their regional representatives.

Several procedures are available to local governments to form regional planning bodies consisting of members of their own choosing.

The major metropolitan centers of California have created regional planning bodies. The San Francisco Bay Area has the Association of Bay Area Governments. The San Diego area has formed the Comprehensive Planning Organization. The Southern California Association of Governments has been formed in the southern counties, and the Sacramento Regional Area Planning Commission operates in the upper central valley. These are all voluntary councils of governments. They possess no regulatory, taxing or other governmental powers.

Hence, no regional body has the power to compel local compliance with the regional plan.

It appears desirable, however, to establish a procedure which will facilitate cooperation between local and regional entities toward common objectives. To require that local open space plans be submitted to a regional agency for review and comment will serve that purpose.

This is essentially the procedure which is followed in practice in many areas. By providing for such a review procedure by law, each regional body would be assured of the opportunity to review each local plan within its region. Through such a procedure, the regional body could inform local planning bodies of the regionally significant issues raised by the local plan. In this way, local planners would consider regional objectives in their ongoing planning operation.

Obviously, the extent to which state and regional objectives would, in fact, be served would depend upon the sincerity with which local bodies and their regional representatives utilize the procedure.

The scope of such regional review should be limited to matters which the regional body considers to be of interest to either the state at large or to the region.

Recommendation Number 6

Each regional agency should review all local open space plans of the region and forward to the local agency its comments on the local plan with respect to matters included in the State Open Space policy or program and the regional Open Space Plan.

7. REGIONAL APPROVAL OF LOCAL PLANS

As a final extension of the liaison between local and regional planning, local governments should be able to ask the regional body to determine whether a given local plan conforms to the state and regional standards embodied in the regional plan and give a formal approval to such a plan if it meets such specified standards. There are several reasons for such an approval procedure.

One is to enable a local government to satisfy itself that it has been successful in pursuing state and regional objectives.

A second is to determine whether the plan is of such quality that other governmental agencies should be guided by the plan in making decisions on such matters as the appropriation of state money or the approval of the use of federal funds to carry out the local plan. It is important to know whether state and federal funds are used to finance programs which advance the state's interest. This can best be determined by measuring the program within the context of a local plan which has been determined through the approval process to be consistent with state policy.

The scope of the regional review and approval should be limited to matters which are of importance to the region.

Recommendation Number 7

When requested by the local agency, the regional agency should approve the local open space plan if it finds that it:

A. Is consistent with and implements the regional Open Space Plan, and that it

B. Includes an action program setting forth specific programs to be used in implementing the plan.

8. REGIONAL APPROVAL OF LOCAL PROGRAMS

There is presently no requirement in the state planning law that local land-use control programs conform to local plans. And assuming that such a requirement existed, there is no means of determining the degree of consistency between local plans and the programs designed to carry them out.

There are a number of reasons why these programs should conform to a plan. There are also sound reasons for devising a mechanism to determine whether this requirement is met in practice. The question is how far should such a testing mechanism be allowed to impose the wishes of the tester over the tested.

Local governments argue with some force that only the local planning body should be permitted to pass judgment upon the programs it chooses to employ in executing its plan.

For the moment, the Committee is of the opinion that regional review of and comment upon local plans and programs as suggested in Recommendation Number 6 will give sufficient assurance that local planning bodies will pursue regional and state objectives and will adopt and enforce programs which are consistent with and carry out their own plans.

There are, however, two situations where it appears necessary to require that regional approval be given to local plans and programs because of a compelling state responsibility or interest.

The first of these is in connection with state or federal assistance for local programs which affect open space. Clearly, such funds should only be authorized where they serve to carry out local open space plans which have been reviewed and approved on the basis that they reflect and carry out regional and state objectives.

The second is where the program results in use-value assessment under the authority of Article XXVIII.

Legislative Counsel's Opinion No. 16738 indicated that for any land-use control program to be considered an "enforceable restriction", the state's interest is required by the Constitution to prevail over that of the local entities which use them. That opinion concluded in these words:

> "Finally, it should be pointed out that Section 2 of Article XXVIII . . . which authorizes the special assessment of open space lands, provides that such lands must be subject to (an) enforceable restriction, *as specified by the Legislature,* in order to be eligible for such assessment. We have doubts that enforceable restrictions specified by the legislative bodies of local government . . . would satisfy this requirement."

It is the opinion of the Committee that the state should condition the approval of certain state and federal grant funds or local use of Article XXVIII assessment of open space lands upon regional approval of the local land-use control measures utilized in carrying out an approved open space plan. However, since application for state and federal funds and use of Article XXVIII assessment are optional with

local governments, the question of regional approval of land-use programs should also be optional.

Recommendation Number 8

When requested by the local agency, the regional agency should review programs and actions implementing local open space plans and approve them if it finds them to be consistent with an approved local open space plan.

9. LOCAL PROJECTS AND SPECIFIC PLANS

A. Local Projects

Too often government itself is responsible for violating the policies which it has adopted to control the actions of others. By the location of public service facilities, public bodies can exert a strong influence over future patterns of urban development.

It seems only equitable that if local government is to act as the guardian of the public's interest in prudent land use, that the rules it proposes to guide private decisions should apply with equal force to public land-use decisions. One difficulty is, however, that even in areas where the local governing body endeavors to follow its own planning guidelines, special districts are not bound to comply. School districts, for example, are not bound by local zoning.

One need not be a professional planner to appreciate the problem created by the location of a school in an area set aside in a local plan for agriculture. To do so will attract development pressures which are inimical to the objectives of the plan. Because of such problems, it is important that all local agencies be bound to comply with local plans.

B. Specific Plans

The Planning and Zoning Law allows local governments to prepare and adopt specific plans, based upon the general plan, as a means of systematically executing the general plan. The value of such a procedure is that it clearly combines the plan with the enforcing regulation. The statute now specifies certain purposes for which specific plans may be used, most of which appear to limit its use to developed or developing areas. It seems desirable to clearly authorize the use of specific plans for the regulation of the use of open space land.

Recommendation Number 9

The Planning and Zoning Law should be amended to:

A. Require that projects of local agencies, including school districts, be required to be consistent with local general plans.

B. Permit cities and counties to adopt specific plans which include regulation of the use of open space land.

10. LOCAL PLANS

A. Open Space Element

The planning law presently specifies a number of "elements" which must be contained in a local general plan. These elements concern land use, circulation and housing (Government Code Section 65302). While

some local governments have adopted an open space element of their general plan, no requirement that they do so is contained in the planning law.

A large number of local agencies do not plan for open space. The result of this is that most local plans are development oriented. Planning for urban expansion frequently dominates planning for open space preservation. In order to assure a balanced consideration of land conservation objectives and the problems of planned urban growth, open space should be added to the list of mandatory elements of each general plan.

B. Action Program

There is currently no requirement that local plans contain a description of the program which the legislative body intends to promulgate for the implementation of the plan. The result is to perpetuate the dichotomy between the plan and the control measures which should carry it out. This in turn tends to result in two parallel plans. One plan is the official general plan. The other is the de facto plan drawn by the local legislative body as it administers zoning and other land use programs.

Ideally, there should be a unity between these two plans. The first step toward that objective is to require that each open space plan contain an action program setting forth the various means by which the planning body proposes to achieve its planning objectives. Only in this way will the various entities concerned with planning matters be placed on notice of the entire planning pattern.

C. Regional Review of Local Plan

As discussed in Recommendation Number 6, local open space plans should be submitted to the regional agency for review and comment.

The scope of this review and comment should be limited to matters which are of importance to the region.

D. Regional Approval of Local Plan

For reasons discussed in connection with Recommendations Numbers 7 and 8, local governments may desire regional approval of their local plans. The scope of this regional review and approval should be limited to matters which are of importance to the region. It should not be the job of the regional body to second guess local officials on purely local issues.

E. State Objectives

It can be said that the state's overall interest in open space conservation will never be protected until each of its subordinate units aligns its open space policies and programs with those of the state. Local decisions can easily undercut and erode statewide objectives. Accordingly, both cities and counties must be bound to carry out the objectives declared by the state.

F. Local Actions

The best plan poorly followed can be of little value. The Planning and Zoning Law contains no requirement that the issuance of a building

permit or the approval of a subdivision map be consistent with an adopted plan. Until local actions are required to comply with the appropriate local plan, the danger of thwarting planning goals will continue.

Recommendation Number 10

The Planning and Zoning Law should be amended to:

A. Require that every city and county adopt an open space element of its general plan by June 30, 1973.

B. Require that city and county open space plans contain an action program consisting of specific programs which the board or council intends to pursue in implementing its open space plan.

C. Require that each open space plan adopted by a city or county be submitted to the appropriate regional agency for its comment as to consistency with the State Open Space Policy and Program and regional open space plan.

D. Permit a city or county to submit its adopted open space plan to the regional agency for its approval on the basis that it conforms to the State Open Space Policy and Program and the regional open space plan.

E. Provide that both cities and counties must seek to fulfill open space objectives and pursue state open space policy.

F. Provide that no city or county may issue any building permit, approve a subdivision map, or adopt an open space zoning ordinance unless the proposed construction, subdivision, or ordinance is consistent with its adopted open space plan.

11. LOCAL OPEN SPACE ZONING

A. Zoning Ordinance Requirement

It is not enough merely to plan for open space preservation. There must be some public assurance that plans will be carried out. One means of insuring that local open space plans are carried out is to require that land designated as open space in a local plan be restricted to open space uses.

In the absence of such a requirement, there exists no guarantee that open space objectives will be carried out. It is also important to establish a requirement of agreement between the open space plan and the open space zoning ordinance.

B. Regional Review

To assure the necessary agreement between open space plans and ordinances, it is desirable to provide for a regional review of the zoning ordinance. This regional review should be similar to that suggested for local plans. The regional body should be encouraged to issue a public evaluation of the ordinance in terms of its regional significance.

This same regional review and comment procedure should also apply to any amendments to an ordinance.

C. Variances

Protecting the integrity of open space zoning will require strict interpretation and enforcement of variance requirements. Conventional zon-

ing has not always been successful in preventing deviation from zoning restrictions through administrative actions in response to political or economic pressure. The extent of this problem is considered in detail elsewhere in this report.

D. Regional Approval

As discussed under Recommendations 7, 8, and 10 D, local governments may wish to submit local open space zoning ordinances for regional approval.

E. Open Space Zoning as an Enforceable Restriction

As discussed elsewhere in this report, zoning as practiced to date has failed to inspire public confidence as a means of restricting the use of open space land. Evidence of its failure as such a device is that the existence of a zoning ordinance has usually been ignored by both prospective buyer and assessor.

It is to be hoped that better land-use programs, resulting in conservation of open space land, will come from the legislative direction proposed in this report and from use of the regular procedures recommended.

In addition, recommendations 7 and 8, as well as 10 D and 11 D, provide that local governments may seek regional approval of their open space plans and enforcement programs in order that they may qualify for state or federal assistance for open space projects, and in order that they may offer use-value assessment to the owners of open space land restriction by ordinance.

The Committee is of the opinion that special requirements recommended in these proposals, including regional approval of open space plans and ordinances, are such as to warrant mandatory use-value assessment of such land. However, the Committee is also of the opinion that the final decision as to whether an approved open space ordinance is to have the effect of an enforceable restriction in the assessment of land subject thereto, should rest with the city or county.

Recommendation Number 11

The Planning and Zoning Law should be amended to:

A. Require that by January 1, 1974, every city or county adopt an open space zoning ordinance consistent with an adopted open space plan.

B. Require that every open space zoning ordinance or amendment thereto be submitted to the appropriate regional agency for review and comment as to its conformity with the State Open Space Policy and Program and the regional and local open space plans.

C. Require that the law governing the issuance of variances from local open space ordinances be strictly interpreted and enforced so as to protect the interest of the public in the orderly growth of urban areas and in the preservation and conservation of open space land.

D. Provide that any city or county may submit open space zoning ordinances or amendments thereto to the regional agency for

approval on the basis of their conformity with its approved open space plan.

E. Provide that a city or county may by resolution establish an approved open space ordinance as an enforceable restriction within the meaning of Article XXVIII of the State Constitution.

12 AND 13. DEVELOPMENT PLANNING CONTRACTS

In Article XXVIII of the State Constitution the people declared "that assessment practices must be so designed as to permit the continued availability of open space lands" for the "production of food and fiber, and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well being of the state and its citizens."

The Legislature has authorized several programs for carrying out the purposes of Article XXVIII. Under the authority of the California Land Conservation Act of 1965 (Williamson Act) counties have entered into contracts restricting over five million acres of land to agricultural and compatible uses. Counties may also now accept open space easements and various other interests or rights to land. To date, however, most of the land included in such programs is remote from cities and other urban areas.

The principal reason for this is that these programs cannot be adapted to fully satisfy the objectives of all who are concerned with one or another of the aspects of problems involved in expanding urban areas.

These problems are mainly the following:

(1) While counties may prepare and adopt long-range plans for development of land either near expanding urban areas or in remote areas which may offer promise as sites for new towns and other such developments, a county can do little to assure that such plans will be followed because:
   (a) There is no assurance that the desires of the landowner will in the end coincide with the county plans.
   (b) The likelihood that as development actually approaches, the area will be annexed to a city or otherwise included in an incorporated area.

(2) While cities may prepare long-range plans and may even prezone land not yet annexed, it actually can exercise no direct controls over the land until annexation takes place.

(3) Annexation of land very far in advance of development is avoided by cities because it commits them to providing municipal services in advance of receipt of tax revenue, and by landowners because of the likelihood that assessed valuation will rise to reflect the imminent development and because the land will become subject immediately to city taxes.

(4) There is no present method whereby cities can act in concert with landowners to limit the assessed valuation on land outside the city to its present use-value or even to the value which may reflect its ultimate use.

(5) In the absence of any assured relationship between property taxes and the time and nature of ultimate development, there is little incentive for landowners to participate in long-range planning in such a way as to allow cities or counties to participate in the entire planning process.

(6) The economic problem existing in the absence of any assured relationship between property taxes and the timing and nature of ultimate development can defeat the efforts of potential developers to hold or assemble large tracts of land for development purposes.

In an effort to provide a program which will serve the objectives of both the landowner and the public by relating long-range development planning to property assessment, the Committee has developed the following proposal which would:

(1) Permit a city, one or more counties having adopted a general plan, and the owners of a specific parcel of land contiguous to the city, to enter into long-term development planning contracts which would:
   (a) Be for a term that would extend at least until development of the area is complete or until terminated in the public interest by mutual agreement of all parties.
   (b) Require a long-range plan for the development of the entire parcel to be part of the contract.
   (c) Require the adoption and annual updating of an interim plan which would designate the kinds of development that may be permitted by ordinance within five years.
   (d) Provide strict conditions under which plans and ordinances might be changed.
   (e) Provide procedures for preparing, executing, and carrying out the provisions of the contract.

(2) Permit one or more counties, a regional or state body, and the owners of land to enter into a similar contract on land not included in the general plan of a city.

(3) Provide for the restriction of all land according to its use at the time the contract is executed, including open space uses, and provide that land restricted to open space use be deemed subject to an enforceable restriction for purposes of Article XXVIII and Sections 421–29 of the Revenue and Taxation Code.

Recommendation Number 12

The Legislature should enact a new law authorizing a city, a county and the owners of land to enter into development planning contracts which would:

(a) Provide for the long range planning and staged development of parcels of land adjacent to cities and which lend themselves to such long range planning.

(b) Provide that land restricted to open space uses pursuant to a development planning contract be deemed subject to an enforceable restriction within the meaning of Article XXVIII of the State Constitution.

Recommendation Number 13

A county, the appropriate regional agency and the owner or owners of land not included within the general plan of a city should be authorized to enter development planning contracts in the same manner and with the same effect as proposed for a city, a county and land owner.

14. VETERANS' FARM AND HOME PURCHASE LOANS

Because mortgage or other security holders are not bound by such contracts in the event of repossession, some counties require that secured creditors become parties to contracts entered pursuant to the California Land Conservation Act. Apparently private lenders have been willing to do so, thus clearing the way for the landowner to execute such a contract.

However, the Department of Veterans Affairs has refused to enter or countersign such contracts. The Department's policy in this regard does not appear to rest on the question of risk or the effect of the contract upon the value of the security. The contract has no effect upon the title to the land and the Department's farm loans are based upon appraisals that relate to the agricultural value of the land.

The Department maintains, however, that it has no statutory authority to enter such contracts. Representatives of the Department have advised the Committee staff that, given such authority, they would have no objection to doing so.

Recommendation Number 14

The California Land Conservation Act of 1965 (Williamson Act) should be amended to require the Department of Veterans Affairs to execute a contract pursuant to that Act upon the request of a veteran purchasing a farm under its Farm and Home Loan Program.

15. EMINENT DOMAIN REQUIREMENTS

Article 6 (commencing with Section 51290) of the Government Code establishes limitations upon the authority of public agencies and persons to condemn land within agricultural preserves established pursuant to the California Land Conservation Act of 1965 (Williamson Act).

Section 51291(b) requires that when it appears that land within an agricultural preserve will be needed for a public use, the public agency or person must advise the Director of Agriculture and the local governing body.

Section 51292 states as follows:

> 51292(a). No public agency or person shall locate a public improvement within an agricultural preserve *based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.*
>
> (b) No public agency or person shall acquire *prime agricultural land* covered by a contract pursuant to this chapter for any public improvement *if there is other land within or outside the preserve on which it is reasonably feasible to locate the public improvement.*
>
> (Emphasis added)

Section 51293 provides exemption from the requirement of Section 51292 in certain instances. Among these are:

51293(a) The location of improvements where the board of council administering the agricultural preserve approves or agrees to the location thereof.

51293(c) The location of any public utility improvement which has been approved by the Public Utilities Commission.

Section 51294 provides in part that "Section 51294 shall be enforceable only by mandamus proceedings by the local governing body or the Director of Agriculture."

These sections combine to create unusual problems for public agencies proposing to construct water transmission facilities extending into more than one county. Such public agencies can overcome the requirements of Section 51292 by gaining approval or agreement of the local governing body. If they should fail to secure such approval, the only avenue of appeal available to them would require that they proceed without such approval at the risk of having the local governing body or the Director of Agriculture seek a writ of mandamus, the issuance of which they might contest in court.

While the Committee is not of the opinion that the present requirements of Section 51292 and 51293 should be weakened, it is the opinion of the Committee that a more direct procedure should be established whereby any public agency proposing to acquire land within an agricultural preserve for a project extending into two or more counties may seek the approval of such counties, and, if denied, be permitted within a reasonable time to sue for a determination of compliance. Such a suit should be permitted to be filed in any superior court of the counties involved and have effect in each county subject to the suit.

Recommendation Number 15

The California Land Conservation Act of 1965 (Williamson Act) should be amended to:

(a) Prescribe a procedure by which a public agency proposing to acquire land within an agricultural preserve for a project extending into two or more counties may request approval of its project of the board or council of the county or city administering the preserve; and

(b) Provide a method by which the public agency, in the event the board of council refuses to give such approval, may seek a court determination of its compliance with Section 51292 of the Government Code which would bar the issuance of a Writ of Mandamus sought pursuant to the Section 51294 of the Government Code.

16. NOTICE OF HEARING ON CANCELLATION

Section 51284 of the Government Code provides that no Land Conservation Act contract may be canceled (as authorized in Section 51280–51284) until after the county or city has given notice of and held a public hearing on the matter. In addition, the county or city is required to send notice of the hearing to each of the owners of land under contract and situated within the same agricultural preserve.

In establishing agricultural preserves, at least one county, Stanislaus County, has followed the procedure of establishing a single agricultural preserve for the county, which includes all land subject to its A-2 (exclusive agriculture) zoning ordinance. This means that various parcels of land may be widely separated although within the same preserve.

It also means that in order to comply with the mail notice provisions of Section 51284, the county would have to mail to every owner of land under contract within the county.

The Committee considers the procedure followed by Stanislaus County in establishing agricultural preserves in areas coextensive with land subject to its A-2 zoning ordinance to be consistent with the law. Such an integration of agricultural preserves and exclusive agricultural zones appears to have advantages in carrying out the purposes of the California Land Conservation Act.

While the Committee considers the mail notice to all owners of land under contract to be unnecessarily burdensome, it is of the opinion that it is important to continue to provide such notice to the owners of land under contract in the proximity of the land upon which the contract is proposed to be cancelled.

Recommendation Number 16

The California Land Conservation Act of 1965 (Williamson Act) should be amended to provide that mail notice of a public hearing need be sent only to the owners of land under contract within the same agricultural preserve and within one mile of land upon which the owner of land under contract is seeking cancellation of his contract rather than to every owner of land within the preserve.

17. EXTENSION OF LAND CONSERVATION ACT TO RECREATIONAL LAND

As enacted, the California Land Conservation Act of 1965 (Williamson Act) was limited in its application to agricultural land as defined in the Act. During the 1969 Regular Session of the Legislature, eligibility was extended to certain "open space uses" defined by the Act in Section 51201 as follows:

> **(n)** "Open space use" is the use or maintenance of land in such a manner as to preserve its natural characteristics, beauty or openness for the benefit and enjoyment of the public, to provide essential habitat for wildlife, or for the solar evaporation of sea water in the course of salt production for commercial purposes, if such land is within:
>
> **(1)** A scenic highway corridor (as defined)
> (2) A wildlife habitat area (as defined)
> (3) A saltpond (as defined)
> (4) A managed wetland (as defined)
> (5) A submerged area (as defined)

While many areas used or available for public recreation are eligible as land in agricultural or open space use, the Committee is of the opinion that land used for public recreation specifically should be made eligible to be included within an agricultural preserve and to be made subject to a contract restricting its use to recreational uses and

uses compatible therewith. Such a proposal is consistent with Article XXVIII of the State Constitution.

Recommendation Number 17

The California Land Conservation Act of 1965 (Williamson Act) should be amended to extend eligibility to land open to the public for specified recreational uses.

18. FUNDING

No program to preserve open space land is free from cost. To acquire land for public use requires direct expenditure of public funds for acquisition or maintenance. To encourage owners to use land in the manner that offers the greatest value to the public assumes that such use must be an economic one for the owner. If communities do no more than forego a measure of tax revenue in order to make it possible and attractive to a landowner to maintain his land in an open space use, it will result in a reduction in revenue which must be replaced from another source. To restrict the use of land by government action, such as zoning, will, if it is to be effective in preserving the land, probably be viable only if property taxes are related to the restricted use. This will also require that any reduction in revenue be replaced from another source.

To meet the costs of open space programs, local governments must be able to look to the State for financial assistance. The question of sources of funds to meet state and local costs becomes the critical one.

An ideal funding source to finance an open space program would have the following features:

(1) It would be intimately linked to the need for additional open space or the use of existing open space.

(2) It would further a land-use policy by encouraging the preservation of open space.

(3) It would discourage practices which tend to result in the loss of open space.

(4) It would expand as the need for additional funds for open space grew.

Neither the Technical Advisory Committee nor this Committee has been able to identify a source that meets all of these criteria. Therefore, while the matter of specific sources of funds for open space purposes has been considered, no definitive conclusion has been reached. However, it seems certain that the commitment of a substantial amount of money on a regular annual basis is vital if any long-range program of preserving open space land is to be realized.

The Committee noted two studies which indicate that a very sizeable annual amount would be required to carry out an adequate program. The open space study conducted by Eckbo, Dean, Austin and Williams for the State Office of Planning identified specific parcels of land within a forty mile radius of the state's metropolitan centers which, if acquired, in fee or less than fee, would cost four billion 1970 dollars. Almost half of this would be required to finance existing plans of various public agencies which have not been carried out because of lack of funds.

This study * found that of the total acreage recommended for acquisition, 733,197 acres were subject to high encroachment pressures. The study recommended full fee acquisition on 272,472 acres at a 1970 cost of $1,861,889,524, and less than fee acquisition on an additional 460,725 acres at a 1970 cost of $1,105,419,848. These represent total acquisition costs which presumably could be shared by federal, state and local entities.

The study also estimated that the increase in costs resulting from delaying acquisition of land in both categories from 1965 to 1970 would approach $700,000,000, or an increase of almost 30% over the estimated 1965 cost.

Another study done for People for Open Space indicated that acquisition of land to carry out the ABAG open space plan would require an expenditure of $1.25 billion in the Bay Area alone.

The question of how such programs should be financed is critical. Since the benefits to be derived from an open space acquisition program will be shared by all of the people of the State, clearly the burden should be similarly shared.

While single changes in the tax laws of the State could yield amounts of the magnitude suggested, it would seem more appropriate to turn to the general fund itself in order to assure the desired breadth of support. This would of course dictate that the entire tax structure of the state be examined and altered in order to produce the needed amount.

It is contended that one of the most important elements of such a financing program would be its reliability and regularity. Only with such a dependable source can a long range program be devised and carried out on a sound basis rather than on the basis of current availability of funds.

Many obstacles stand in the way of the Legislature making and delivering on such a commitment. Even if one Legislature should embark upon such a program in good faith, the temptation would always be present for other Legislatures, hard pressed for revenue, to renege upon such a commitment in order to continue other state programs without raising taxes.

One way of giving considerable stability and security to such a program of long-range financing is to seek authorization for general obligation bonds in an amount sufficient to finance a ten year program of open space acquisition and development.

In addition to providing the necessary funds, the fact that such a proposal would have to be approved by the electorate would give the Legislature and the Administration a gauge of the people's sincerity and support for a massive program to preserve open space lands.

Obviously, such a program would be based upon carefully devised programs and would be used to fund local and regional projects of statewide interest as well as those of purely state interest.

There are, of course, many questions which arise at the thought of such a bond issue. Among these is the current situation in which the State finds itself with respect to the bond market. Even though issues of short term bonds offered during 1969 attracted bids of 5% or under, the State has refrained from offering authorized water project and

* See Appendix B.

veterans' bonds because it is unlikely that such bonds would attract bids at that level.

S.C.A. 26 (Cologne) will be voted upon at the time of the June 1970 primary. While approval of this measure, combined with S.B. 763 (Chapter 740, Statutes of 1969) will raise the limit on the State's general obligation bond rate to 7%, such an increase in interest would obviously raise the cost of bond financing and militate against its desirability.

On the other hand, it is possible that increases in acquisition costs resulting from delay in purchasing open space land could be greater than bond interest costs over the same period.

While many factors must be considered, the Committee is of the opinion that such a method of financing acquisition and development of open space lands is a thoroughly appropriate one. The Committee is also of the opinion that the State is capable of undertaking a sizeable bonding program for this purpose.

Recommendation Number 18

The Legislature should take steps to assure that regular annual state appropriations are made available in an amount which, in addition to funds from local and federal sources, will be sufficient to finance an adequate open space program for California.

One possible step would be for the Legislature to seek approval by the electorate of a general obligation bond issue to finance a ten year acquisition and maintenance program.

The exact amount of such a bond issue should be agreed upon after careful study. On the assumption that the State must provide a substantial amount of assistance to cities and counties, and on the basis of the information included in the Urban Metropolitan Open Space Study, the amount of such a bond issue should approximate one billion dollars for expenditures over a ten year period.

19. EXTENSION OF PROVISIONS OF SUBDIVISION MAP ACT

Cities and counties now have the authority under Section 11546 of the Business and Professions Code to require the dedication by subdividers of reasonable amounts of land for park and recreation purposes as a condition in the approval of a subdivision map. In lieu of land, the subdivider may pay a fee. Land so dedicated and fees paid are now required to be used for the benefit of the residents of the subdivision. The use of this provision is presently being appealed in the courts.

Some cities have utilized this authority to require substantial fees in lieu of the dedication of land. One city levies fees according to the following schedule:

Single family or duplex, per lot	$245
Single family dwelling, per acre	1,100
Multiple dwelling, per acre	1,470
Mobile home, per acre	1,470

Obviously, this method produces substantial revenue for acquisition of land for park and recreation purposes by local governments. Its extension to other open space lands and to use by the entire community seems desirable.

Recommendation Number 19

The Subdivision Map Act should be amended to:

A. Require cities and counties to require dedication of land or levy fees in lieu of dedication which they are now permitted to require or levy by Section 11546 of the Business and Professions Code.

B. Permit such land and fees to be used for open space purposes other than parks and recreation.

C. Require cities and counties to demand similar fees as a condition to granting a residential building permit for multiple dwellings of four or more units where such fees have not been paid in connection with the approval of a subdivision map.

CHAPTER 4

OPEN SPACE OBJECTIVES

GENERAL GOAL

The stated objective of Article XXVIII is the preservation of land needed for recreation, scenic beauty, natural resources and the production of food and fiber. It was proposed in response to a growing public awareness that these resources, once thought to be unlimited, are being lost at a rate which has no parallel. It was passed by a people who sensed that California's environment, once the envy of the world, was in imminent danger of being lost. It reflected the view that, to protect the total environment, one must begin by preserving the land.

There can be little doubt that between 1966, when Article XXVIII was passed, and today, the importance of conservation has assumed a still higher priority in the public consciousness. The list of private organizations dedicated to protecting environmental amenities steadily lengthens. Public opinion polls consistently place environmental concerns in the first tier of problems demanding urgent public action. In response to this, it is a rare public figure who has not stated within recent months his determination to seek action to preserve the environment. The Committee has no doubt that these statements are sincere and that eventually action will come.

SPECIFIC GOALS

The overall objective of environmental protection subsumes a number of distinct goals. These goals concern: land-use planning, land-use control, real property taxation and program funding. Each of these fields embraces its own set of problems and objectives.

1. Land Use Planning Generally

There can be little doubt that population control lies at the heart of our environmental crisis. However, in the absence of population control, the single most important facet of environmental control concerns land use. If the government is able to assure the optimum use of our very limited land area, many environmental problems will have been solved.

The central element of any program to safeguard environmental amenities must concern the use of open space land. However, before we can begin any long-range program of open space land conservation, we must first identify the land we deem necessary to preserve as open space. Second, we must establish an orderly ranking of priorities for the many land uses which compete with open space.

We must decide, therefore, what we want to save, and why we want to save it. Only then may we decide *how* given areas of open space can best be maintained.

a. Local Planning

Under present law there is no requirement that open space needs be considered in community planning. In those instances when open space requirements are considered in local planning, there is no requirement to relate land-use decisions to the plan. It is important, therefore, (a) to assure that open space be considered as a part of the overall planning process, and (b) to guarantee that public and private land-use decisions be made within the context of planning decisions.

Traditionally, local governments have had little guidance from the state or federal governments in making land-use decisions. Seldom does the state demonstrate the importance of local planning to the region or the state. Almost never does it require that local decisions reflect regional, state and national needs.

b. Regional Planning

California's urban development has long since ceased to follow the precise political designations of cities and counties. In recent years the gulf between emerging patterns of urban growth and established political boundaries has grown steadily wider. With this trend has come a general awareness of the need to reevaluate our parochial approach to planning.

An important legislative goal should be the creation of regional bodies capable of planning for regional needs. Ideally, such a regional body should have the responsibility to prepare a comprehensive land-use plan. Open Space objectives can be easily thwarted through failure to control other land uses.

c. State Planning

The people, in approving Article XXVIII, affirmed the fact that there is an identifiable statewide interest in the conservation of open space land. It is the view of the Committee that this interest extends to specific parcels of uniquely valuable open space as well as to broad categories of land possessing values which are of statewide importance.

Safeguarding the state's interest in particular parcels or categories of land which possess value to all the people is the function of the State Legislature. This will require an inventory of the State's open space land in order to locate those particular parcels or broad categories of open space land which are of statewide concern. As a corollary to this, it is necessary to provide some means of restricting the use of these areas, either by the state or by local agencies.

2. Land-Use Control

All worthy land-use control programs are directed at the utilitarian objective of securing the greatest social benefit to the greatest number of people at a minimum of cost. Land-use control measures should be sufficiently sturdy to protect the public interest, yet flexible enough to permit deviation in cases of unique individual hardship.

We know of only three general categories of land-use control techniques. The most effective and permanent, as well as the most costly, is acquisition. Government may acquire an infinite variety of interests in land, ranging from scenic or development easements, limited and partial fees and future interest, to total fee simple ownership. However,

acquisition has limitations. The most obvious of these is cost; but there are others. The greater the share of government ownership in land, for example, the greater the removal of property value from the tax base. And there is the additional question of how much land government should own.

A second method of controlling the use of land is through the voluntary action of the landowner. The central difficulty of any voluntary program is that of providing sufficient incentive to landowners to influence them to restrict the use of their land. California has sought to encourage certain landowners to restrict their land to open space uses in return for a tax assessment which is keyed to the ability of their land to produce income in the restricted use. The normal result of this procedure is to remove urban increments of value from the assessment, and to lower the property tax. However, there are many other factors that the landowner must consider in deciding what he should do with his land. Some of these are sufficient to offset any benefit received from lower taxes. This being the case, such a program places government in the precarious position of basing the chances of success of its program on the hope that the interests of the landowner will coincide with the interests of society.

These built-in weaknesses of the voluntary approach render it inadequate as the mainstay of a land-use control program.

The third approach to the regulation of land use is that imposed by government in order to satisfy the public interest. Sometimes this would involve the imposition of controls without regard to the wishes of the landowner. Zoning is the most common of these "police power" mechanisms.

In theory, zoning represents the most equitable solution to the problem of controlling land use in the public interest. Conceptually, in zoning all land is regulated uniformly by the elected representatives of the community. Each landowner benefits in proportion to his share of the overall betterment of the community.

However, there is a difference between theory and practice. In practice, zoning works reasonably well only in urban areas. For economic and political reasons, zoning has not been successful in preserving open space. Local officials have traditionally responded to pressures to expand the local tax base and to permit landowners to reap financial gain by rezoning rural land to permit more intensive urban uses.

3. Taxation

In June of 1968 the Citizens Technical Advisory Committee adopted a series of goals. The first of these goals was to achieve a "more effective correlation between property tax laws and assessment policies and local, regional and state planning so as both to encourage the development of land when consistent with such planning and to discourage the premature development of land when inconsistent with such planning."

The Advisory Committee suggested three methods of achieving this goal:

1. The assessment of agricultural and other income-producing land on the basis of income in its highest and best restricted use, giving consideration to both its relative quality for such use and the rela-

tionship of the supply to the demand for the products or services indicated by such use.

2. The development of uniform guidelines for determining capitalization rates and income.
3. The establishment of appropriate standards of valuation for the assessment of land not producing significant income and which is restricted to scenic, recreational or rural purposes.

These objectives express an interest in aligning our tax policy with our land-use policy. Failure to maintain a consistency between these two sets of policies has been responsible for the premature conversion of open space to urban uses. A major objective of Article XXVIII is to remove the impact of the property tax as a major element in determining land use.

In the 1969 session of the Legislature the Joint Committee on Open Space Lands sponsored a number of assessment reform proposals, some of which were recommended by the Technical Advisory Committee. These measures concerned land which had been voluntarily restricted by the landowner. All of these measures were enacted by the Legislature. But while assessment policies do not now dictate our land use policies in the case of land restricted under voluntary programs, the need to mitigate the impact of taxation on land controlled through regulation by government has yet to be answered. In this report the Committee suggests a "police power" program which is considered to possess sufficient permanence to warrant an assessment which is keyed to the restricted use of the land.

4. Program Costs

All land conservation programs cost some person or group something. The cost may be direct and visible, as in the case of acquisition. The cost may also be indirect and hidden, as in the case of lost tax revenue. Regardless of the device used, there will always be an economic cost to be borne by someone if the use of land is to be regulated.

It is in the critical area of allocating the burdens of preserving open space that the sincerity of the public and their representatives is put to the ultimate test. The question is whether society is sufficiently committed to preserving open space to be willing to pay the price. In the final analysis, this issue is resolved less in terms of "how much" than in terms of "who pays."

The traditional distinction between voluntary and involuntary land-use control programs is seen to be wholly fallacious when viewed in these terms. Once society decides that open space is worth keeping, payment is always compulsory. The question is, compulsory upon whom?

The landowner who involuntarily has the use of his land restricted by governmental action, pays part of the price directly. The rest of the price is shared by the community in the form of a tax shift.

When the public acquires open space through purchase, the taxpaying public pays the whole cost. Each member of the community is compelled to contribute his share of the cost through various taxes.

The residential homeowner who finds his property tax bill increased through a tax shift resulting from a so-called voluntary open space

program does not pay that higher tax voluntarily. He is compelled to pay for his share of the open space or lose his property at a tax foreclosure sale.

Since the turn of the century Americans have learned to accept a relatively high degree of governmental regulation of urban land use. They have accepted, and at times demanded, this control out of a sense of general public necessity. This sense of necessity was at first directed at preventing fire and maintaining standards of public health. Today, in our more crowded age, it extends to aesthetic considerations as well.

The history of California has seen its population double every twenty years. At the dawn of the 1970's California's population approximates twenty million people. It is clear that the pressures generated by what has been called the population bomb will make public control of rural land a public necessity.

The area which separates city from country, and city from city, has all but dwindled away in many parts of California. One of the "prices" which urban dwellers have had to pay in the interest of community benefit has been the loss of the absolute right to use their land in any way they chose. Rural landowners must inevitably join their urban neighbors in sharing the burden of preserving an hospitable environment by accepting similar restraints.

The argument is often advanced that if society demands open space, then society should pay for it by compensating the landowner for his loss of freedom. This argument is seen to be wholly specious when viewed in the light of accepted concepts of land-use control. There appears little reason to prevent a residential homeowner from constructing a potentially lucrative service station on his land while assuming that rural landowners must be compensated for a similar regulation.

There is, of course, a point beyond which society cannot be permitted to demand that public needs be provided gratuitously by its individual members. Constitutional strictures as well as ordinary notions of fairness preclude government from taking private property without just compensation. Instituting more stringent land-use control measures in rural areas would restore equity among landowners generally, and will go part of the way toward preserving land for open space purposes. But it will not begin to eliminate the need for the expenditure of public funds, either through direct payments or replacing unrealized revenue. There remains, therefore, a need to devise some means of financing a comprehensive open space program.

CHAPTER 5

PLANNING COMMISSION STUDY

Throughout the study by this Committee and the Citizens Technical Advisory Committee the ability and in some instances even the desire of local governments to preserve open space have been questioned.

However, it was also frequently pointed out that the importance of open space and its preservation has only recently become a matter of widespread public concern and that it is only fair to assume that those in local government will respond to it.

It is true that numerous examples of poor planning by government can be found throughout California. But these are not limited to counties, cities and special districts. The record discloses that state and federal entities are not free from fault in planning matters. For the moment the Committee prefers to believe that with the changes in direction and authority contemplated by these recommendations, local governments will respond to the current concern of the public and take steps to develop and enforce positive land-conservation programs.

The recommendations should not, however, be taken as a blanket endorsement of local government's record in land-use decision making. Indeed, they should not be taken as implying any value judgments of any sort. Passing judgment upon the actions of local government is not within the scope of this Committee's charge.

But while the Committee is not yet prepared to praise or condemn local governments, it is important to examine the way in which they function in practice.

Such an examination is important for two reasons. First, it is necessary in order to know what to expect from local agencies if the above recommendations, especially as they relate to zoning, are enacted. Second, an understanding of local practice is needed in order to predict the degree and kind of state supervision which may be needed in the future.

In the course of the Committee's research, the staff has explored several facets of the planning machinery as it now exists in California. Part of this research has delved into the makeup and conduct of local planning commissions. In this effort the Committee has been assisted by the Stanford Environmental Law Society. Their report follows.

The report, prepared by Mr. Rummonds, indicates the need to maintain a vigilant review of the local land-use control procedures outlined in this report. While we may hope it will be otherwise, such a review may disclose the need for bolder action by the State in directing these local decision-makers than the Committee feels justified in making at this time.

PLANNING COMMISSIONS IN THEORY AND PRACTICE

By JAMES S. RUMMONDS *

INTRODUCTION

Planning Commission Report

This report is a preliminary analysis of the theory and practice of city and county planning commissions in California. It is part of a continuing study of the role played by these local agencies in the resolution of disputes over the competing demands for the use of private property.[1] The purpose of this preliminary report is twofold: First, to analyze some of the major criticisms directed at planning commissions; and second, to relate these criticisms to the actual practice and composition of planning commissions in California.

The data upon which the second part of this discussion is based consists largely of questionnaires sent out to thirty-eight city and fifty-three county planning commissions throughout California, supplemented by field research in northern and southern California. The survey requested the names of the planning commissioners, length of service and current professions. It should be pointed out that the data drawn from this source did not include information on the economic interests of the commissioners, their financial status, or their relationships with the local political and economic power structure.

PLANNING COMMISSIONS IN THEORY AND PRACTICE

Today planning commissions are experiencing greater public scrutiny and criticism than ever before. Appointments to the commissions are said to be the result of political debts; the commissioners are charged with incompetence, ignorance and conflict of interest; and the commission itself is viewed as an anachronism in theory and ineffectual in fact.[2] The truth of these charges has been hotly contested for some time by critics and advocates of the present system. However, it is not the purpose of this report to determine the validity of these allegations, but rather to simply present and examine them.

Planning commissioners are universally appointed by the local legislative body or the executive officer. As a rule there are no qualifications required for appointment. Once appointed the commissioner's job is to "Advise the Director of Planning in the preparation of the master plan . . . Hold all public hearings which may be required by law . . . Adopt the master plan . . . Make such reports and recommendations to the City Council as may be necessary . . . Report and recommend on ordinances, orders, or resolutions relating to planning . . . and to/Make recommendations to the Department and others concerned on matters important to sound and effective city planning . . ."[3] Thus, in essence the planning commission, as a public decision making body, is composed of laymen, has little independent power, and is not responsible to the whole of the community. Yet the operations of these agencies often involve millions of dollars in real estate.

The people that serve on planning commissions must, to begin with, have the time to spend at least one day a week meeting and holding

* Stanford School of Law, January 24, 1970.

public hearings. As a result, representation of lower and middle class groups is made virtually impossible. Of these who have the leisure time to devote, a common criticism of their appointment is that it is part of a system of political back scratching. In a taped interview with a City Planner in a major California city the author asked about this problem in regard to appointments to the Board of Zoning Appeals:

Mr. Rummonds: Who serves on this appeal board and how are they appointed?

City Planner: Well, we have a close friend of the Mayor . . .

Mr. Rummonds: What does he do?

City Planner: He's kind of a wealthy guy. Spent most of his time down here; seemed very involved in everything. I think he clips coupons or something for a living. He was the Mayor's campaign manager time before last. For a while he sat on both the Board of Zoning Appeals and the Planning Commission. Kind of a funny situation.[4]

The rewarding of campaign aides with political appointment is neither new nor unusual in American politics. Indeed, such patronage is hardly unheard of in positions of much greater visibility, but few if any offer a greater opportunity for self-dealing. Even in the case where patronage is not a factor, the high financial stakes involved in zoning subject the commissioner to intense pressure from those with a vested interest in the decisions of the planning body. One need not look far for examples.

It was recently discovered that the Sacramento County Planning Commission chairman had intimate business relations with a local developer. The commissioner voted on sixteen applications by his business associate, fourteen for and two against, yet he never disclosed his business dealings because, "he never believed his contacts with 'Mr. X' raised any questions of ethics."[5]

While the county commissioner was being linked to development interests it was learned that a member of the Sacramento City Planning Commission also had business dealings with the same 'Mr. X'. It happened that this same city commissioner was originally nominated to the planning commission by a City Councilman who was an executive of the same developer's construction company.[6]

Similarly in Palo Alto, where the City Council must approve of all decisions made by the planning commission, there is a case pending wherein two members of the City Council have been charged with conflict of interest. One of the councilmen is employed by interests seeking to develop an open space area on the outskirts of the city. The other councilman is a partner in a construction company, who at the time of voting on the decision to go forward with the development had expressed an intent to bid on contracts for the job. Neither man disqualified himself from voting on the issue.[7]

In Los Angeles, where the City Council also must give final approval to planning commission decisions, a former councilman was recently convicted of accepting an $11,000 bribe from a developer in connection with a Canoga Park zoning matter. The defendant in this case claimed that the $11,000 he received was a "loan" and that it did not influence his decision on how to vote. The defendant was acquitted on another

count involving $2,700 which he allegedly had received in connection with another zoning matter. On a third count involving a $3,000 campaign contribution from yet another developer, the jury was deadlocked.[8]

In another case from Southern California which is presently being investigated by the local police department the level of self-dealing appears to be reaching epidemic proportions. The players involved here are two members of the Planning Commission and one high official in the Planning Department. The facts are as follows:

In August of 1968 the Airport Board of Commissioners adopted a resolution calling for the construction of a new airport in an undeveloped outlying area. Shortly thereafter one planning commissioner and a member of the planning department put a down payment on the property being considered for the new airport development. It was later learned that the President of the Planning Commission had also bought an interest in this property on his own. When the matter came before the planning commission for a vote one of the commissioners asked the City Attorney for an opinion regarding a possible conflict of interest. The City Attorney's reply was that there was no legal conflict of interest. At the time of voting the President did not divulge his interest in the property but later asked for an opinion from the City Attorney. Same negative reply. The City Council recently met to discuss the case and decided to continue the hearing pending an investigation by the police department.[9]

From these examples it can be seen that there are certain problems inherent in the present system of land use regulation that need immediate attention. What constitutes conflict of interest? How strict should codes of ethics be and how should they be applied? What considerations need to go into the drafting of legislation to deal with such problems? And on a broader scale, how effective are these local bodies in confronting and resisting the pressures being applied? Should the task of urban planning be taken out of the hands of local agencies? The answers to these questions are clearly beyond the scope of this preliminary report, but it should be noted that any attempt to solve these problems must look beyond the immediate protagonists. The more difficult problem arises when a public official with inside information works through unrelated third parties. It is remarkable that in this area where virtual fortunes can ride on a single decision that there are no counterparts to the regulations that control securities transactions such as those of the Securities Exchange Commission. Insiders are given a free hand to use their information in any way that does not run counter to the narrow language of State conflict of interest statutes and the narrower language of municipal codes of ethics.

Another criticism common to planning commissions is that the zoning procedure is used by special interest groups to protect their own limited interests. These interests may include protecting residential areas from industrial intrusion, excluding the poor and minorities from desirable residential neighborhoods, protecting property values, or achieving financial gains. More than forty years ago University of Chicago Law School professor, Ernst Freund, stated, "Everyone knows that the crux of the zoning problem lies in the residential district, and that when we speak of amenity we have in mind residential preference."[10] This

premise is still widely accepted. Richard Babcock, in his recent book *The Zoning Game,* states: "The insulation of the single-family detached dwelling was the primary objective of the early zoning ordinances, and this objective is predominant today . . ." [11] This contention may very well be true, however for the purposes of this report the important point is that "residential preference" and "primary objective" represent dominant yet limited interests that express their preferences through such vehicles as city councils and planning commissions. To better understand the nature of these special interests it may be helpful to briefly discuss the ostensible purpose of a planning commission as seen through the ethereal prisms of the "public interest".

The task of urban planning is no longer simply a matter of dividing up the community into industrial, commercial, single-family and multiple-family zones or districts. Although most decisions are still made by laymen on local planning agencies, the past fifty years have brought about some recognition of the burden involved in urban planning. Over sixty universities presently award masters degrees in city and regional planning, ten the doctor of philosophy. The breakdown of city services and urban violence has generated a public recognition of the severity of urban problems. Dr. Melville C. Branch, Professor of Planning in the Graduate Program of Urban and Regional Planning at the University of Southern California has described the task of urban planning in these words: "It is seen that urban planning is concerned with all components of the city, is technically extremely complex, and involves the most basic characteristics of Man and the full range of his intents, environment, social-economic-political processes, public and private institutions.[12]

In theory these concerns are expressed through the democratic process, and are implemented through such bodies as planning commissions. Whether or not this political process actually serves to transfer the wishes of the body politic into action, we should recognize this as its root purpose. What in fact occurs, as indicated above, is often a different matter.

University of California Davis Law School professor, Edward Rabin recently told a workshop for planning commission members that, "There is no question in my mind that much suburban zoning is a euphemism for economic segregation." [13] Initially, the concept of zoning was the product of some ingenious legal footwork by sophisticated and knowledgeable lawyers who believed that the common law nuisance doctrine could be used to build a comprehensive scheme of land use regulation under the aegis of the police power. The United States Supreme Court recognized and upheld this concept in the landmark case of *Village of Euclid v. Ambler Realty Co.*[14] The Court stated, "A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard." In this case the pig was industry or apartments and the parlor was single family zones. Babcock points out that the reasoning behind the extension of the nuisance doctrine into land-use regulation was largely built on rather flimsy legal fictions such as: the single-family district was insulated to prevent the spread of fires; minimum house sizes was related to public health; billboards were a threat to the morals of the community because of the activities that took place behind them. All of this reasoning falls

under the rubric of the public interest. No one believed this line of reasoning when it was first advanced and no one believes it today; yet many jurisdictions including California continue today to allow this broad power to be utilized for private ends. Professor Rabin is questioning whether or not this is an illegal exercise of the police power designed not for the public welfare but for the immediate goals of dominant interests.

Judging the performance of planning commissions by the public welfare standards is not an easy task. However, there are certain guidelines. The California State Planning and Zoning law requires that each city and county in the state create by ordinance a planning agency.[15] In practice this has generally come to mean a planning commission, planning department and the local legislative body working together. The functions of the planning agency include the development and maintenance of a general plan and periodic reviews of the capital improvement plans of the city or county.[16]

By statute, the general plan is required to include the following elements:

(a) A land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.

(b) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

(c) A housing element.[17]

It is the stated intention of this law that the general plan "serve as a pattern and guide for the orderly physical growth and development" of the cities and counties and as a "basis for the efficient expenditure of its funds."[18] There are, of course, problems in defining what is and what is not an efficient expenditure of funds.

In an interview with a staff planner in Southern California the author asked how development plans are formulated and what factors go into the general plan. His comments are noteworthy.

Mr. Rummonds: What is your general plan?

Mr. Planner: It stems from a comprehensive zoning plan that was adopted in 1946. Up until that time we really had no master plan as such. Basically what we adopted as a generalized plan was a colored map that sort of generalized the zoning that was on the ground.

Mr. Rummonds: Are you saying that the master plan was adopted on the basis of how the land was being used at the time of adoption?

Mr. Planner: No, it involved a little bit more than that. It set aside large industrial areas and tried to develop some balance out of it. This was done by developing community plans and integrating them

into the master plan. These community plans are continually up-dated and revised.

Mr. Rummonds: Then there is no actual general plan?

Mr. Planner: There are elements of a general plan.[19]

The apparent confusion involved in determining what goes into urban planning does not stop at innocent bumbling. The decisions regarding priorities often reflect more limited interests. The following illustration is a case in point.

This illustration involves the major northern California city. This city, like most other American cities, is to some extent controlled by a central power structure. The dominant interests here include big labor and big money interests (mainly in the form of land ownership). For years, these interests, acting through the political process have controlled the critical decision making bodies. It has been charged that the planning commission has consistently ignored critical city problems by approving projects contrary to the public interest, as seen in the lack of attention to the crucial shortage of low cost housing.[20]

A recent report shows the vacancy factor in this city of 2.3% for all residential units, both single and multiple-family. In those units costing less than $100 per month the vacancy is .00%.[21] There are over 6000 persons on the waiting list for public housing; and this number, only because the Public Housing Authority stopped putting people on the list because families were bringing all of their possessions to the Public Housing Office to wait for an opening. By the 1960 census there were over 60,000 sub-standard housing units in this city.

Confronted with this situation the city planning commission has approved of measures doing away with over 15,000 low cost housing units. In their place the commission has approved of new projects including skyscrapers, luxury hotels, convention centers, and nine additional parking lots capable of accommodating around 12,000 cars. To accomplish these projects the city is using over 50 million in federal funds and government powers of condemnation.[22]

It is estimated that over 10% of the dislocations from *one* of these development projects are moving into an area with the second highest population density in the country.[23] Investigation by city health officials has shown that in this same area, 50% of the housing units are without heat; that often times as many as fifty people share a bathroom; and that on the average four people share bedrooms.[24] The question is can actions by the planning commission in approving continued financial and commercial development be justified in terms of the public interest when weighed against this type of social need. Furthermore, if in fact the public interest is not being represented, whose is?

We have been looking at the planning agencies of cities and counties in two different lights; on the one hand we see the commissions as a vehicle for the implementation of the community's concept of itself; on the other we see them composed of non-expert political appointees who will find themselves soon after appointment with the possibility of great pressures and temptations influencing their decisions. There are other criticisms of the planning process ranging from structural debilities, involving their recommendatory powers and appealable deci-

sions, to the motives, capabilities and performance of the commissioners. There have been numerous alternatives suggested including a "task force" concept of city planning, greater concentration of powers in professional planners and regional control over land use regulation; yet the city and county planning commission remains the dominant form of organization for urban planning throughout California today. We now turn our attention to the commissioners themselves; who they are and what they do.

The planning commission survey was sent out primarily to determine what interests are being represented on planning commissions by profession. It was hoped that from this information some conclusions might be drawn regarding the factors that influence the decisions of the commissions.

The returns from the survey were broken down into city and county classifications. The professions represented in the replies were broken down into twenty-five categories. Included are: agriculture, architect, attorney, banker, business, clerical contractor, developer, educator, engineer, forester, government employee, homemaker, insurance, labor leader, manager or supervisor, merchant, medical profession, real estate, real estate appraiser, retired, scientist, service organization, skilled labor, and student. Although lacking in some important details, this information provides some interesting insights. Because of the marked distinctions between city and county commissions, each will be discussed separately.[25]

As mentioned above there is a keen interest shown in the decisions of the planning commission by certain segments of the community, viz. those that have a vested interest in these decisions. It would seem reasonable to assume that the most interested parties would be those that stand to profit from these decisions; for example landowners (on which we have only sketchy information), development interests (which would include architects, land developers, contractors, and real estate), and financial interests (including banking and insurance). If this is true we might further hypothesize that these interests would seek to control as many variables (viz. planning commissions) as possible in order to see that their ends are accomplished and maximize their gains.

For example, the San Diego Planning Commission is composed of seven members; included are a bank president, an electrical contractor, a real estate broker, an investment counselor, and a tax appraiser. In Glendale the five man planning commission includes two building contractors, an architect, and a banker. Pasadena's nine man commission includes two architects, an insurance executive, a builder, a real estate agent, and a real estate appraiser. Sacramento's commission includes a construction trade union official, a saving and loan association president, the president of Northern California Developers, Inc., and two realtors among its nine members. Sitting on San Bernardino's eleven man planning commission is a plumbing contractor, a sign contractor, four realtors, a construction trade union representative, and an insurance executive. Although in each of these examples it seems clear that those with the most to gain from the decision-making process are making the decisions, the sample is not sufficiently broad to draw any firm conclusions. The statistics from the thirty-eight cities surveyed are more reflective of prevailing conditions.

The highest proportional representation among the twenty-five professional categories is real estate at 10.4%. Following is architects at 6.5%, insurance at 4.6%, construction at 3.9%, banking at 3.1%, labor at 1.5%, and real estate appraisors at 1.2%. This means that 31.2% of the people sitting on planning commissions at least theoretically have a direct beneficial interest in the decisions that are made. If the three categories of business interests represented in the survey are added to the direct beneficiaries the total representation jumps to 52.9%.[26] This is not to suggest that a 52.9% representation of direct and indirect beneficial interests conclusively proves that planning commissions are dominated by special interest groups that profit from their own decisions. It is however strong evidence of the fact that planning commissions, as presently structured and regulated, potentially can be utilized in a manner that is contrary to the public interest. Indeed, the existence and practice of self-dealing has already been amply demonstrated in the above cited cases. The evidence is especially telling if we define the public interest as meaning the long range beneficial interests of the community at large rather than correlating it with the profit making interests controlling the political economy.

Outwardly, it would seem safe to assume that what is true of the city planning commissions would also be true of the county planning commissions since structurally and functionally there is little difference between them. However there is one dramatic difference between many of the county commissions and the typical city commission. Whereas in the cities, the interests that we have broadly defined as development oriented have the greatest stake in the application of land use regulations, in the counties the dominant interests take on a more traditional rural orientation. This factor enables us to make certain assumptions regarding land ownership. For example we can assume that agriculture is the dominant economic activity in most unincorporated areas. Given this assumption and if the hypothesis is true we would expect to see a marked increase in the representation of agricultural interests.

Examples showing the domination of county planning commissions by agricultural interests are numerous; e.g., in Sutter County there are five farmers on the seven man planning commission. Stanislaus County's nine man planning commission includes five farmers and one farm equipment dealer. On the Solano County Planning Commission there are four farmers, one building contractor and a realtor among the nine members. San Benito County has four farmers and a banker on its six man commission. Four of the five members of Lassen County's planning commission are farmers and the fifth member is an insurance broker. Merced County's seven man planning commission is composed entirely of farmers. It may be said that these particular examples reflect an unusual bias, but the same trend can be seen in the replies from the fifty-three counties surveyed.

Agricultural interests are represented by 24.4% of all county planning commissioners. Behind the agricultural interests comes business at 14.3%; retired, 9.3%; real estate, 9%; and insurance, 5.3%. Without going further, these five categories make up 62.3% of all county planning commissioners. One fact seems clear: economic interest in the disposition of competing demands for the use of private property, is a major if not dominant factor in the composition of city and county

planning commissions in California. The question remains whether or not this interest is manifested in the decisions of these bodies.

The above examples of self-dealing and conflict of interest indicate not only that decisions occasionally are made on the basis of self-interest, but more important that the present system is easily adapted to private interests. The question then becomes, to what extent are the planning commissions in California controlled by self-serving interests. The simple fact that the decision makers have an economic interest in the decisions that are made does not necessarily prove that this interest is carried over into the decision making process. What is needed now is further research on the question of how the economic interests of developers and landowners are in fact reflected in the decisions of these local agencies. Efforts in this area are presently going on at Stanford and elsewhere.

Finally, once the influence of the economic factor has been determined, the issue shifts to what factors do we want to control the land use regulation decision making process; community interests, regional interests, state interests, environmental interests, economic interests? Optimally, the answer to this question is that all of these interests should be represented. The problem remains of how to accomplish this goal.

NOTES AND REFERENCES

[1] Further study is presently being carried on dealing with the effect of economic interest on voting patterns. This study will be completed by January 1971.
[2] See Sacramento Bee, Oct. 17; Palo Alto Times, Nov. 22, 1969; Los Angeles Times, Nov. 6, 1969. A program to improve planning and zoning in Los Angeles. By Citizens Committee on Zoning Practices and Procedures, July 1968.
[3] Los Angeles City Planning Commission General Operating Policies and Practices. Adopted: October 19, 1967.
[4] City Staff Planner Interview; Los Angeles, California; November 13, 1969.
[5] Sacramento Bee, October 17, 1969.
[6] Ibid.
[7] Palo Alto Times, Nov. 22, 1969.
[8] Los Angeles Times, Nov. 6, 1969.
[9] Los Angeles Times, Jan. 26, 1969.
[10] 24 Ill. Law Review 135, 146 (1929).
[11] At pg. 3.
[12] *Delusions and Diffusions of City Planning in the United States*, pg. 2.
[13] Sacramento Bee, Steve Gibson.
[14] 272 U.S. 365 (1926).
[15] California Government Code, Section 65100.
[16] Ibid. Section 65101.
[17] Ibid. Section 65101.
[18] 1968–1969 Annual Report of the Alameda County Planning Commission, pg. 1.
[19] Interview with City Staff Planner, Los Angeles, California; Nov. 13, 1969.
[20] Administrative Complaint in Opposition to a Workable Program; filed with HUD by the Citizen Task Force for a Workable Program.
[21] Bradwell Report, December 1969.
[22] Yerba Buena Redevelopment Project; undertaken by the San Francisco Redevelopment Agency and HUD.
[23] The area referred to is the China Town, North Beach Census Tract. From a letter by Justice Herman to the Chairman of the Human Rights Commission of San Francisco dated September 12, 1969.
[24] Chinatown Housing Survey, Spring 1969; by the Community Design Center, University of California Berkeley.
[25] See Appendix 1 and 2.
[26] The three categories referred to are: business (goods), business (services), and merchants. Combined they represent 16.7% of the total.

CHAPTER 6

OPEN SPACE—WHAT IS IT?

Article XXVIII of the State Constitution authorizes the Legislature in carrying out the provisions of that article to define "open space lands."

Many definitions of open space land have been suggested.* However, none of these definitions has succeeded in embracing the many ways in which the term "open space" is commonly used. There are a number of reasons for this.

The first of these is that open space is used in popular parlance to denote a vague quality of openness.

Another source of difficulty stems from the fact that even among those professing specific interests, open space is used to denote a wide variety of land uses. The criteria for selecting open space vary, depending upon one's frame of reference.

> "Some yearn only for lonely wildlands, others want no less than a resort in the same place. Birdlovers wish for wooded acres; architects for an inspiring vista; airport designers for an unobstructed glide path; city planners for a girdle to contain and define the form of the city; municipal builders and highway engineers for land to be held in reserve for future expansion. The city dweller seeks a place to camp in the country; the farmer to defend his acres from the encroachment of subdivisions.†

A third source of confusion concerning the meaning of the phrase open space has to do with the policies we seek to advance by preserving it, regardless of our definition of the term. For example, urban planners frequently include in their definition of open space land needed for future expansion of urban areas. This criterion, of course, implies nothing about the characteristics of the land itself other than that it is capable of being built upon. This sort of open space is not really open space at all. It is future city.

In short, open space means different things to different people for different reasons.

In general, this should present no problem, leaving, as it does, the determination of what is open space to "the eyes of the beholder." However, where determination of government policy and action is contemplated, something better is demanded.

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* The federal government defines open space as "any undeveloped or predominantly undeveloped land in an urban area which has value for (A) park and recreational purposes, (B) conservation of land and other natural resources, or (C) historic or scenic purposes." Housing Act of 1961 (75 Stat. 149) Title VII, Section 706. One definition employed by the State of California is: "Any space or area characterized by (1) great natural scenic beauty, or (2) whose existing openness, natural condition, or present state of use, if retained would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources." (Cal. Govt. Code Sec. 1, Ch. 12 of Div. 7 of Title 1, Sec. 6954.) For purposes of Article XXVIII, open space has until now been defined as land which has been designated as such by government and subsequently restricted to open space uses.

† E. Stanley Weissburg, *Open Space and the Law.*

Nevertheless, the Committee is not prepared to suggest a lexicographer's definition of open space. Indeed, it appears that it is neither possible nor desirable to devise such a definition. The answer to the question, what is open space, can only be given on a parcel by parcel basis. Pinpointing open space is a planning rather than a linguistic problem. The factors which influence the planning process will be weighed differently in each case. The reason for this is that the problem of deciding whether a given parcel of land is or is not open space for conservation or preservation purposes depends upon current notions of social utility and upon the strength of competing land uses.

This is not to say, however, that the characteristics of open space cannot be described. On the contrary, the social values which open space possesses can and must be objectively identifiable so as to guide public officials in their decisions regarding it.

There are basically three sorts of land which possess values to society as open space.

1. Positive Open Space

The first of these is land which possesses positive value to society in an open state. Such land may be either a specific parcel or a broad category of land which may be located through the application of objective criteria. Generally speaking, "positive open space" is land which should be preserved for affirmative reasons having to do with the characteristics of the land itself.

The Urban-Metropolitan Open Space Study conducted for the State Office of Planning under the direction of Edward Williams in 1965 suggested a series of land classifications which represent positive social values. Three of these categories are:

1. Resource production areas
   a. Forest land
   b. Agricultural land
   c. Mineral resource land
   d. Animal product areas
   e. Water supply land
   f. Commercial waterways
2. Resource conservation areas
   a. Natural water habitat
   b. Forest wildlife refuge
   c. Geologic areas
   d. Historic and cultural sites
3. Health and welfare areas
   a. Ground water recharge areas
   b. Waste disposal areas
   c. Air shed
   d. Recreational land
   e. Recreational travel ways
   f. Scenic areas

When open space characteristics are enumerated in this way, the impossibility of defining open space in such a way as to be able to separate it through definition, acre by acre, from other land, becomes clear.

Furthermore, the importance attached by governmental bodies to preserving given parcels or categories of open space land will change from time to time. For this reason, not all land presently used for any of the above purposes will necessarily continue in that use as the demand for more intensive land use increases.

In addition, the relative importance of land needed for specific open space uses such as recreation will change markedly in years to come. Not all undeveloped land now available for outdoor recreation will be reserved indefinitely. However, more land will be needed and set aside for regional parks, beaches, fishing access areas, hunting preserves, golf courses, trails and the like.

Given all of these considerations, positive open space land is either a specific parcel of land or a precise category of land which is objectively definable. The San Francisco Bay, Point Reyes Seashore, Cabrillo Beach and Upper Newport Bay are examples of the former, and prime agricultural land is an example of the latter. It is land which, for reasons which relate solely to the nature and quality of the land itself, is more valuable to society for open space purposes than for any other.

2. *Negative Open Space*

The second category of potential open space land possesses qualities which are essentially negative. This is land which would be dangerous to use for any urban purpose.

Flood plains, unstable soil areas, geologic fault zones, airport flight paths and areas subject to unusually high fire danger may be classed as negative open space. For these sorts of land, urban usage presents a threat to public safety.

Obviously, some land possesses both positive and negative open space characteristics. For example, our best agricultural land is located on alluvial flood plains.

3. *Greenbelts as Open Space*

The term "greenbelt" has traditionally been used to denote a separate category of open space. It would not be accurate to consider it as such under this analysis, however, since greenbelts may possess values which are (1) positive, (2) negative, (3) positive and negative, or (4) non-open space. In this sense, greenbelts cut across the previous two categories of open space and frequently provide public values which do not necessarily relate to the need to preserve open space.

A greenbelt may be thought of as a peripheral band of open space. It normally surrounds an urban area, although it may divide portions of a greater metropolitan region.

As a matter of policy it may be justified for its positive values as open space, such as for agriculture, parks or recreation. It may, in turn, possess the sort of negative values discussed above, such as steep slope, unstable subjacent soil, geologic fault or danger of fire or flood. Where the land is capable of multiple uses it may provide both positive and negative values to the public.

An equally important justification for the retention of greenbelts makes reference to neither their positive nor their negative value to the community as open space. As a matter of urban policy, it may be

enough to preserve greenbelts simply as a means of directing the growth of the city or as a means of defining communities and lending aesthetic amenity to the city scape. In this sense the policy which greenbelts serve relates not to the identifiable value of open space *per se,* but rather to the public benefit of containing and guiding urban growth.

Land which is not presently ripe for development should obviously not be developed. Controlling the timing and location of urban development is important. It can obviate the need to extend costly urban services—streets, schools, fire and police protection—to an area which is far beyond the present urban area. However, it is important to view this function of land development control as a facet of urban policy—that of preventing leapfrog development in the interests of the public. The policy in favor of economizing in the provision of urban services preserves open space only incidentally. Similarly, policies favoring the preservation of the prime farmland surrounding many cities, or preventing building on flood plains, advance our anti-leapfrog policy only incidentally.

In short, we contain urban growth for reasons which make reference to cities, and we preserve open space for reasons which relate to our need to preserve certain land in an undeveloped state. Regardless of the motive, the public benefits.

It of course makes little difference to the owner whether the land is retained as open space because of its characteristics as open space, or whether it is retained as open space in order to serve the purposes of the urban area. For this reason there would seem to be little reason to distinguish between parcels of land on this basis, as long as the land is used for open space purposes and is subject to an enforceable restriction.

However, it is important to maintain the conceptual distinction between open space which possesses positive or negative values and a greenbelt designed to prevent urban sprawl, in order that programs designed to preserve them are fully understood by the public.

Failure to understand and maintain these distinctions could lead to the charge that open space policy is trying to accomplish two inconsistent objectives, whereas, in reality, each serves an important public purpose.

The opinion of the Committee is that, where the interest of the public dictates and findings to that effect are made by local governments, it is appropriate, as part of comprehensive planning, to adopt programs to preserve open space where any of these three conditions are present:

(1) The land has "positive open space" characteristics, i.e., it is land which, for reasons which relate solely to the nature and quality of the land itself, is more valuable to society for open space purposes than for any other.

(2) The land has "negative open space" characteristics; i.e., it is land which would be dangerous to use for any urban purposes.

(3) The land is restricted by public action to an open space use as a means of preventing development and as part of a planning process which directs development elsewhere.

CONCLUSION

One of the charges to the Legislature contained in Article XXVIII is the task of defining open space lands. We have attempted to indicate in the above discussion that such a task is akin to being asked to define an object which is beautiful. No possible definition, in the ordinary sense, will ever serve as a sort of Geiger counter to locate the defined object. Instead, the object must first be located and then designated as meeting the test of the definition which, in this instance, is a test of public value.

This is, of course, quite the reverse of the normal process of defining anything. However, open space is more than an object. It is quality, relationship and relative juxtaposition as well. If it were otherwise, a simple set of criteria could be proposed which, when applied to the landscape, would illuminate that which was open space and leave all else cast in shadow.

In summary, it is the opinion of the Committee that where the Constitution or the statutes call upon governmental bodies to "define" open space lands for the purpose of public action, it is not intended to require a literal definition. Instead, such provision should properly be interpreted as obligating a governmental body to establish a basis for the need for public action with respect to specific open space lands. The extent of this public duty can only be measured by balancing the public benefit against the burden that results. The logical extension of this analysis is that these governmental bodies must also be expected to provide a system of open space designation in order that specific areas may be delineated for specific purposes.

CHAPTER 7

OPEN SPACE AND THE POLICE POWER IN CALIFORNIA

By GERALD D. BOWDEN

California is a place in which a boom mentality and a sense of Chekhovian loss meet in uneasy suspension; in which the mind is troubled by some buried but ineradicable suspicion that things had better work here, because here, beneath that immense bleached sky, is where we run out of continent.[1]

INTRODUCTION

Police Power

The police power has traditionally been viewed as society's right to self defense.[2] In the words of the Supreme Court, "It springs from the obligation of the State to protect its citizens and provide for the safety and good order of society . . . It is the governmental power of self-protection."[3]

Through the nineteenth century and beyond, the scope of permissible governmental interference in private land use was severely limited. In the field of land use regulation, as with government generally, the prevailing judicial attitude was essentially negative. "A century ago", wrote one commentator, "the State acted merely as policeman, soldier, and judge."[4]

The job of government was to protect society from foreign and domestic attack. "Leviathan hath two swords," said Hobbes, "war and justice."[5] If Hobbes was reluctant to give Leviathan compass and calipers to chart a positive course for social progress, twentieth century America was not.

California courts were among the first to recognize that "the police power is not a circumscribed prerogative, but is elastic and, in keeping with the growth of knowledge and the belief in the popular mind of the need for its application, capable of expansion to meet existing conditions of modern life, and thereby keep pace with the social, economic, moral and intellectual evolution of the human race." In brief, "There is nothing known to the law that keeps more in step with human progress than does the exercise of this power."[6]

The police power has been expansive. It has changed to meet new needs of society for self protection. But more importantly, it has changed to meet new conceptions of government as a positive force in directing the fortunes of society.

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[1] Joan Didion, *Slouching Towards Bethlehem*, (1968) p. 172.
[2] *McGuire v. Chicago, B. and Q.R. Co.*, 108 N.W. 902, 907 (Iowa, 1906).
[3] *Panhndle Co. v. Highway Commission*, 294 U.S. 613, 622 (1935).
[4] Bernard Schwartz, *A Commentary on The Constitution of the United States, Part III, The Rights of Property*, MacMillan Co., New York, 1965, p. 42.
[5] Thomas Hobbes, Treatise on *"The Matter, Form and Power of a Commonwealth, Ecclestiastical and Civil"*, (1651).
[6] *Miller v. Board of Public Works*, 234 Pac. 381, 383 (1925).

"Nothing is more striking to a European traveller in the United States," wrote de Tocqueville, "than the absence of what we term the government, or the administration."[7] In the century since de Tocqueville wrote, perhaps nothing has changed so much as the presence of government in our daily lives. Nowhere has this ubiquitous presence of government received more mixed reaction than in the area of land use regulation. Governmental involvement in the use of private property has been loudly acclaimed and vociferously denounced. But from this dialectic has emerged a consensus that the conservation of our limited supply of land deserves a high priority among the social interests which government must rightfully protect. This public interest in protecting the physical foundation of cultural progress has received an increasing amount of judicial approval. Nearly a quarter of a century has elapsed since the highest California court considered the issue sufficiently well settled to state:

> "That the protection and conservation of the natural resources of the state is in the general welfare and serves a public purpose, and so constitutes a reasonable exercise of the police power, is now so well settled that no further citation of authority is necessary."[8]

Implicit in this consensus is the assumption that, considering the limited supply of land needed to satisfy the virtually infinite number of individual desires that press upon it, such land must be made to go as far as possible.[9] To that end the public has urged government to enjoin conduct which does not promote the public's interest in prudent land management. At the same time the popular demand for government to assume a positive role in the preservation and provision of land needed for public use has climbed steadily. As one writer put it, "Earlier attitudes of laissez faire have given way in the face of the obvious dissipation of forests and soil and the realization that the resources of the nation are far from inexhaustible."[10]

American courts have made dramatic changes in the scope of permissible governmental control of the land. One scholar has summed up the prevailing attitude of the American judiciary thus:

> "The legitimate interest of the society in its natural resources permits it to take any measures which bear a reasonable relationship to their conservation."[11]

Article XXVIII

The purpose of this report is to suggest the permissible steps which California government may take to protect society's interest in her rapidly diminishing supply of open space land. At the root of this in-

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[7] Alexis de Tocqueville, *Democracy in America,* 70 (Bradley, ed. 1945). He also wrote that "Scarcely any political question arises in the United States which is not resolved sooner or later into a judicial question. Hence all parties are obliged to borrow in their daily controversies the ideas, and even the language peculiar to judicial proceedings." Gettell, *History of American Political Thought,* 212. This may explain why this examination of open space land use regulation, a singularly political issue, is here presented as a legal problem.

[8] *Tulare Irrigation District v. Lindsay-Strathmore Irrigation District,* 45 P. 2d 972, 988 (Cal. 1935).

[9] See 3 Pound, Jurisprudence 305, and Tryon "Conservation," 4 *Encyclopedia of the Social Sciences,* 227 (1931).

[10] Schwartz, op. cit., p. 154, citing *Nabbia v. New York,* 291 U.S. 502, 528 (1934).

[11] Ibid.

quiry stands Article XXVIII of the California Constitution. The stated purpose of that article is to "continue in existence open space lands for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens."

To further this popular mandate to conserve open space land (Article XXVIII was passed by a margin of nearly 600,000 votes), the Legislature was authorized to provide for the assessment of certain open space land to maintain it for open space use. To establish eligibility for this tax incentive, the Legislature must define what is meant by "open space land." To qualify for assessment as "open space land", the subject land must also be subject to an "enforceable restriction" to open space use.

The job of the Legislature is, therefore, to define open space lands and to provide for the assessing of qualified land on the basis of its open space use whenever it is subject to an enforceable restriction to such use.

At this writing the California Legislature has yet to define the term "enforceable restriction" on more than an interim basis. One frequently suggested definition involves zoning. This paper will examine many of the issues which such a proposal raises.

One critical issue in this examination involves the question how far may government go in implementing Article XXVIII via police power land-use control such as zoning. In looking at that issue it is necessary to examine the development of land-use regulation generally. Since zoning is the principal vehicle for modern land-use control, it will be examined here in what may prove for some to be laborious detail.

How far can government go in preserving environmental quality through land-use control? As we shall see, the answer changes with the addition of each person to our population, each car to our highways, each housing tract to our valleys, and with each tremor of the San Andreas.

However difficult it may be to define with epistemological certainty the shifting frontiers of governmental authority in directing land use according to public necessity, this much can be said: it is greater today than yesterday.

It is probably reasonable to assume that the courts will sanction still greater control than that justified solely upon needs of society if the landowner is compensated in some manner. It is important in this respect that Article XXVIII permits the Legislature to grant special property tax treatment to the owners of restricted open space land. To the extent that this use-related assessment works to the financial benefit of these landowners, the courts are likely to consider the tax benefit as a measure of compensation given in exchange for the restriction of their land.

A secondary purpose of this paper, therefore, is to show that the Legislature has developed a firm policy favoring the preservation of open space through use-related assessment. Indeed, it was the clear purpose of Article XXVIII, in coupling use-value assessment with an "enforceable restriction", to use a tax policy to further a land use policy. It is probable, therefore, that any police power measure adopted pursuant to Article XXVIII would receive greater judicial deference

than programs rooted in a less elaborate set of policies and programs. Similarly, it is likely that in cases of demonstrated public need, courts will allow a relatively greater degree of land-use control when the landowner is compensated via use-related assessment than when he is not.

It is not the purpose of this paper to urge the Legislature to implement Article XXVIII through use of its police power. That is a political, not a legal, question. The purpose of this paper is to raise the issues which must be resolved should the Legislature choose to draw upon its police power in fulfilling its responsibility under Article XXVIII.

The question whether open space land should be regulated at all is not in issue. The people in adopting Article XXVIII have said that it should be. However, many other questions remain. Why is zoning inadequate, either as a use restriction or as a justification for use-related property tax assessment? Why should our land use policy be no more than the aggregate of isolated decisions by self-seeking landowners?

As one author pointed out, the San Andreas is not our only fault.[12] There is much about California which is in need of serious question. California may have been the first state to pass a regional planning law expressly authorizing open space planning.[13] And yet after more than forty years we continue to ignore the regional impact of state and local land-use decisions. It has been pointed out that "this is the only place in the world where people build 50,000 homes which are bound to wash away in the first heavy storm—and keep on doing it, year after year, in spite of repeated disasters."[14] The author concludes that:

> Clearly they are built by scoundrels and bought by fools; . . . Why the local governments of California do nothing to curb the suicidal impulses of its citizens is something of a mystery. The most plausible answer that I got is that every Californian is at heart a real-estate speculator, and would bitterly resent any zoning laws which interfere with his divine right to destroy the landscape. For people so eager to doom themselves, who needs an atom bomb?[15]

The assumption of this report is that while severe obstacles lie in the way of preserving our open space land resources, Californians are not committed to self destruction. Assuming this, the purpose of this report is to examine the constraints which limit zoning in an effort to devise a workable land-use control program.

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[12] Curt Gentry, *The Last Days of the Late Great State of California*, 1968.

[13] Stats. 1927, Ch. 874, p. 1899 at pp. 1910–1913. See especially Section 28 which reads in part "Any regional planning commission is hereby authorized . . . to make . . . a regional plan for the physical development of its region. Such plan shall be based on comprehensive studies of the present and future development of the region, with due regard to its relation to neighboring regions and the state as a whole . . . Such plan, including maps, charts, diagrams and descriptive matter, shall show the commission's recommended actions for the physical development of the region, and may include among other things the general location, extent and character of . . . open spaces."

[14] John Fischer, "The Easy Chair—Where It's At" *Harpers*, Aug. 1969, p. 20.

[15] IBID.

Part I

THE EVOLUTION OF ZONING

> *There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word "nuisance." It has meant all things to all men.*[16]

The common law tort doctrine of nuisance molded much of the development of zoning.[17] For centuries the doctrine of private nuisance had allowed a landowner to prevent his neighbor from using his land in a way which interfered with the use of surrounding property. From a meager twelfth century beginning, embodied in the shadowy dictum, "sic utere tuo ut alienum non laedas,"[18] the doctrine slowly crystallized as the most meaningful safeguard against antisocial neighbors.

Parallel with the development of the civil action for private nuisance there evolved the wholly separate principle that interference with the rights of the crown, or of the public, was a crime.

> The earliest cases appear to have involved purprestures, which were encroachments upon the royal domain or the public highway, and might be redressed by a suit by the crown.[19]

Much of the confusion between public and private nuisance stems from the superficial similarity between blocking a private right of way and the blocking of a public highway.[20]

> Thus was born the public nuisance, that wide term which came to include obstructed highways, lotteries, unlicensed stageplays, common scolds, and a host of other rag ends of the law.[21]

In this way there grew up two distinct classes of nuisance. One was narrowly confined to the invasion of private property rights, the other extending to any interference with common public rights. In the words of Professor Prosser:

> The two have almost nothing in common, except that each causes inconvenience to someone,[22] and it would have been fortunate if they had been called from the beginning by different names. Add to this the fact that a public nuisance may also be a private one, when it interferes with the enjoyment of land,[23] and that even apart from this there are circumstances in which a private individual may have a tort action for the public offense itself,[24] and it is not difficult to explain the existing confusion.[25]

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[16] Prosser, *The Law of Torts,* 3rd. Ed. 1964, p. 592.
[17] Anderson, *American Law of Zoning,* 1968, Sec. 2.03.
[18] "Use your own property in such a manner as not to injure that of another."
[19] Prosser, *The Law of Torts,* 3rd Ed. 1964, p. 593 citing Garrett and Garrett, *Law of Nuisance,* 3rd Ed. 1908, 1. Modern examples of purprestures are *Adams v. Commissioners of Town of Trappe,* 204 Md. 165, 102 A. 2d 830 (1954); *Long v. New York Central R. Co.,* 248 Mich. 437, 227 N.W. 739 (1929); *Sloan v. City of Greenville,* 235 S.C. 277, 111 S.E. 2d 573, 76 A.L.R. 2d 888 (1959).
[20] IBID.
[21] Neward, *The Boundaries of Nuisance,* 1949, 65 L.Q. Rev. 480, 482.
[22] Public and private nuisance are not in reality two species of the same genus at all. There is no generic concept which includes the crime of keeping a common gaming-house and the tort of allowing one's trees to overhang the land of a neighbor. Salmond, *Law of Torts,* 8th Ed. 1934, 233.
[23] See Prosser, *op. cit.,* 609 notes 76 and 77.
[24] See Prosser, *op. cit.,* 608.
[25] Prosser, *op. cit.,* 594.

The inherited characteristics of modern zoning can be traced to the early common law denunciation of conduct "which obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects."[26] It was this criminal sanction which by degrees gave way to the judicial practice of enumerating the miscellaneous land uses which offended the public generally.

Noisome Stinks

By the eighteenth century, English courts had catalogued a number of now quaint land uses such as "chandlershops, pig boarding houses, soap factories and bone boiling establishments"[27] which were recognized as public nuisances. Such land uses were actionable and abatable despite their not having been specifically prohibited by statute. By 1757 the doctrine was well enough developed for Lord Mansfield to denounce the:

> erecting of buildings near the highway and near dwelling-houses and there making acid spirits of sulphur whereby the air was impregnated with noisome and offensive stinks, to the common nuisance of all inhabiting and passing.[28]

This doctrine of "public nuisance" allowed the governing body to protect the public interest by judicial action. Through the power to abate undesirable uses, government was given the power to regulate the use of local land in a way which benefited the community as a whole.

Governments in colonial America extended this power by statute. Among the earliest of these statutes was the Massachusetts Gunpowder Act enacted three quarters of a century before the birth of the United States. In one case construing such a codification of nuisance doctrine, the Court reflected with uncommon judicial reserve that:

> It seems to us that there are few things one could do that would annoy the community more than the deposits of a large quantity of gunpowder in the midst of a populous city. And this is so universally felt to be the case, that the practice is to erect magazines for keeping powder at a distance from the habitations of men.[29]

For colonial America, this version of public nuisance was sufficient, as one writer has put it, "to safeguard the interests of property owners against onerous invasions by the noxious effluvia of their neighbors."[30]

But even as statutorily modified through the nineteenth century, this system was barely sufficient to meet the needs of a developing

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[26] Stephen, *General View of the Criminal Law of England,* 1890, p. 105. The hereditary lineage of zoning was made even clearer in this judicial definition of public nuisance: "A common or public nuisance is the doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public." *Commonwealth v. South Covington and C. St. R. Co.,* 181 Ky. 459, 463, 205 S.W. 581, 583, (1918).

[27] *Rhodes v. Dunbar,* 57 Pa. 274 (1868).

[28] *Rex v. White,* 1 Burrow's Rep. 333, (May 1757). In holding that a public inconvenience is not always a public nuisance, one ancient court said in irresistibly quotable judicial rhetoric, "Le utility del chose excusera le noisomeness del stink." Mentioned in Stephen, *General View of the Criminal Law of England,* 1890, 106. Quoted in Prosser, *op. cit.,* p. 603.

[29] *Cheathem v. Shearon,* 1 Swan, 31 Tenn. 213 (1851).

[30] Beverly J. Pooley, *Planning and Zoning in the United States,* 1961, p. 41.

America.[31] The abundant size of the nation obscured the need for, and popular laissez-faire attitudes made unwelcome, any extension of governmental power in the realm of private property.[32]

As the twentieth century dawned, however, and the old frontiers receded, new problems emerged which demanded new solutions. As cities sprang up and threatened to grow out of control, courts began to recognize the necessity of increased governmental regulation of private property. In 1915 the United States Supreme Court upheld the California Supreme Court in recognizing the right of a city to forbid a land use, even though that use had not previously been regarded as a nuisance. The case of *Hadacheck v. Sebastian*[33] has since been recognized as a landmark.[34]

The land owned by Mr. Hadacheck contained a bed of clay which was quite valuable for the manufacture of bricks. He had excavated the property extensively and had erected elaborate machinery for producing bricks. The brick factory had been in operation for some time when the City of Los Angeles annexed the fringe area and passed an ordinance prohibiting brick making in Mr. Hadacheck's yet sparsely settled neighborhood.

The petitioner had averred that "the manufacture of brick must necessarily be carried on where suitable clay is found" and that "from a financial standpoint" the clay could not be transported prior to use. As authority he cited *Ex parte v. Kelso*,[35] where the court had declared invalid an ordinance absolutely prohibiting the maintenance or operation of a rock or stone quarry within a certain portion of the City and County of San Francisco.

The court distinguished Mr. Hadacheck's position from that of *Kelso* by saying, at 36 S. Ct. 146, that:

> In the present case there is no prohibition of the removal of the brick clay; only a prohibition within the designated locality of its manufacture into bricks.

The court reserved the question of how it would rule if the regulation were broader, but anticipated *Consolidated Rock v. City of Los Angeles*,[36] handed down nearly half a century later, when it reasoned that:

> The logical result of petitioner's contention would seem to be that a city could not be formed or enlarged against the resistance of an occupant of the ground, and that if it grows at all it can only grow as the environment of the occupations that are usually banished to the purlieus.[37]

The veteran California jurist, Mr. Justice McKenna, encountered little constitutional difficulty upholding the ordinance as well as the conviction of Hadacheck, saying for the U.S. Supreme Court that:

> It is to be remembered that we are dealing with one of the most essential powers of government, one that is least limitable. It may, indeed, seem harsh in its exercise, usually is on some individual,

[31] See notes 42 and 45 along with text *infra*.
[32] Pooley, *op. cit.*, p. 42.
[33] *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S. Ct. 143 (1915).
[34] Anderson, *op. cit.* Secs. 2.06, 2.09, 6.06, 6.63 and 11.63.
[35] *Ex parte v. Kelso*, 147 Cal. 609, 2 L.R.A. (N.S.) 796, 109 Am. St. Rep. 178, 82 Pac. 241 (1905).
[36] See footnote 105 and accompanying text *infra*.
[37] 36 S. Ct. 145.

> but the imperative necessity for its existence precludes any limitation on it when not exerted arbitrarily. A vested interest cannot be asserted against it because of conditions once obtaining . . . To so hold would preclude development and fix a city forever in its primitive conditions. There must be progress, and if in its march private interests are in the way they must yield to the good of the community.[38]

It should be remembered that the Los Angeles ordinance was enacted pursuant to the city's power to declare certain land uses public nuisances. It is true that the taint of nuisance only attached if the property was located in a prescribed area. This is not the same as zoning. Zoning requires planning.[39] Planning implies comprehensive coordination of land uses. In the early stages of land use regulation in California, courts were receptive to arguments pointing to the deleterious effect on the community of allowing the Mr. Hadachecks of this world to bake bricks which emitted "fumes, gases, soot, steam and dust," causing "sickness and serious discomfort to those living in the vicinity."[40] They were much less responsive to suggestions that certain land uses should be permitted in one zone, but not in another, or that each parcel of land should have a list of permitted uses determined by the city fathers. Common zoning practices such as proscribing decorous businesses from residential areas could not be justified on the basis of nuisance doctrine since such a use is not inimical to residents of the area.

The years following the *Hadacheck* case saw the judicial gap between nuisance prohibition and planned zoning narrow. In 1916, New York City enacted the first "Comprehensive Zoning Regulation."[41] The combination of forces which saw the zoning ordinance upheld has been summarized thus:

> With the increase in traffic, with the growing congestion, the ills attendant upon modern complexities and the daily growing intensity of civic life, it was found that neither the proscribing of the powder mill, the ostracizing of so-called nuisance occupations, the establishment of 'Fire' Zone limits, the adoption of 'Tenement House' Codes, the banishment of industries from residential districts, the limitation of the proportion of a parcel of land which a building thereon may occupy, the restriction of height, nor the carefully drafted 'Building' Codes are—singly or collectively—

[38] IBID.

[39] By this I mean that the process dictates planning of a sort, and not that the Code compels it. See Cal. Govt. Code Sec. 65860 and 65700. c.f. note 154 *infra*. In the absence of a general plan, California courts view the zoning scheme as a plan. See *Miller v. Board of Public Works*, 195 Cal. 447, 488, 234 P. 381, 385 (1925) where the court refers to, "a comprehensive and carefully considered zoning plan." The court in *Wilkins v. San Bernardino*, 29 Cal. 2d 332, 337; 175 P. 2d 542, 547 (1946) notes that "the establishment, as part of a comprehensive and systematic plan, of districts devoted to strictly private residences . . . from which are excluded . . . multiple dwelling structures, is a legitimate exercise of the police power." See generally McBride and Babcock, "The 'Master Plan'—A Statutory Prerequisite to a Zoning Ordinance?" 12 *Zoning Digest*, 353 (1960), Green, "New Trends in Zoning as Recognized by Court Decisions," 6 Inst. on Planning and Zoning 1,4 (1966), and Haar, "In Accordance with a Comprehensive Plan," 68 *Harv. L. Rev.* 1154.

[40] Id. at 36 S. Ct. 144.

[41] James Metzenbaum, *The Law of Zoning*, Vol. I, Second Edition, 1955, p. 7. See also Anderson, *American Law of Zoning*, Vol. I, Ch. 1–2.

able to cope with the daily arising problems of the community . . .[42]

It was this synthesis of interacting forces which prompted the United States Supreme Court to affirm the validity of the first comprehensive zoning ordinance to reach its docket. In the landmark case of *Village of Euclid v. Ambler Realty*,[43] the court paraphrased the summary of Mr. Metzenbaum just quoted[44] by saying that:

> . . . with great increase and concentration of population, problems have developed, and constantly are developing which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities . . . In a changing world, it is impossible that it should be otherwise.[45]

The court went on to say that even if the zoning plan in question were not the paradigm of "wisdom and sound policy," the reasoning may still be sufficiently cogent to preclude the court from saying "as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare."[46]

This statement of the court's unwillingness to second guess the findings of local government set the tone for those cases which were soon to follow. Not only will the court defer to the legislative definition of "general welfare", but once the meaning of that term has been determined, the court will uphold the regulation unless *no set of facts* may be posited which would uphold the reasonableness of the regulation.[47]

On a case-by-case basis, the courts have evolved a series of tests by which a zoning ordinance is judged. While the rubric of zoning is fluid, salient characteristics stand out. One fundamental tenet of zoning is that it must be reasonable. It must represent a rational execution of a rational plan for the entire community. Cases like *Hadacheck*, where the pecuniary loss was $740,000, and *Euclid*, where the loss was $7,500 per acre, show that monetary loss alone will not invalidate a zoning law.[48] We temporarily reserve discussion of how far a regulation will be allowed to erode property value and still be upheld.

We turn now to the question of how restrictive a zoning regulation may be and still fall under the penumbra of the police power.

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[42] Id. at p. 7–8.

[43] *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365; 475 S. Ct. 114 (1926). See Anderson, *op. cit.*, Sec. 1.13.

[44] Mr. Metzenbaum served as attorney for the town of Euclid at all stages of the case from drafting the ordinance to arguing the city's case before the U.S. Supreme Court. For an anecdotal view of some interesting sidelights to the *Euclid* case, see Metzenbaum pp. 56–60.

[45] *Euclid v. Ambler Realty*, 272 U.S. 366 at 386–87.

[46] Id. at p. 395.

[47] See note 106 *infra*.

[48] A consistent line of California cases has confirmed that value diminution resulting from the restriction is not controling. See *Zahn v. Board of Public Works*, 195 Cal. 497, 234 Pac. 388 (1925); *Wilkins v. City of San Bernardino*, 29 Cal. 2d 332, 175 P. 2d 542 (1946); *Lockard v. City of Los Angeles*, 33 Cal. 2d 453, 202 P. 2d 38 (1949); *McCarthy v. City of Manhattan Beach*, 41 Cal. 2d 879, 264 P. 2d 932 (1953); *Johnston v. City of Claremont*, 49 Cal. 2d 826, 323 P. 2d 71 (1958); *Hamer v. Town of Ross*, 22 Cal. Rptr. 686 (1962); *Hamer v. Town of Ross*, 59 Cal. 2d 776, 31 Cal. Rptr. 335 (1963).

LIMITS OF ZONING POWER

Property must not be taken without compensation, but with the help of a phrase (the police power), some property may be taken or destroyed for public use without paying for it, if you do not take too much.[49]

Justice Oliver W. Holmes

Zoning has been defined as "the legislative division of a community into areas in each of which only certain designated uses of land are permitted so that the community may develop in an orderly manner in accordance with a comprehensive plan."[50] The power to execute this "legislative division" is derived from what is loosely described as the "police power." Since the parameters of zoning are coextensive with the outer limits of the police power, it is important to understand the nature of that power.

Mr. Chief Justice Taney once described the police power as "nothing more or less than the powers of government inherent in any sovereignty."[51] Some years later the same court, speaking through Mr. Chief Justice Waite, said that "under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each one shall use his own property."[52]

Perhaps no clearer outline of the source and extent of the police power can be drawn than that offered by the New Jersey court in the case of *Schmidt v. Board of Adjustment*:

> The police power does not have its genesis in a written constitution. It is an indispensable attribute of our society, possessed by the state sovereignties before the adoption of the federal constitution . . . It sanctions measures commensurate with the common material and moral needs; and the correlative restrictions upon individual rights—either of the person or of property—are mere incidents of the social order, considered a negligible loss compared with the benefits accruing to the community as a whole.[53]

In order to appraise accurately the police power as it is exercised in the traditional zoning context, it must be remembered that local gov-

[49] *Springer v. The Government of the Philippine Islands,* 277 U.S. 189 at 209–210 (1927). See also *Home Builders of the Greater East Bay v. City of Walnut Creek,* Contra Costa County Superior Court No. 107280, July 16, 1968.

[50] Emmett C. Yokley, *Zoning Law and Practice,* Vol. I, Third Edition, 1965, pp. 14–15; citing *Eves v. Zoning Board of Adjustment of Lower Gwynedd Tp.* (Pa.), 164 A.2d 7.

[51] License Cases, 46 U.S. (5 How.) 504, 582 (1847). In contemporary terms, this equation of the police power with the sovereign power to govern was not as far-reaching as would appear from the words used. As one commentator articulated, "This was true because the power to govern was itself, until the present century, conceived of primarily in negative terms. This meant that the police power, too, was largely a negative power. When the main task of government (apart from defense) was to keep the ring and maintain fair play while private interests asserted themselves freely, the scope of 'the due regulation and internal order' of the commonwealth was necessarily not unduly vast." Schwartz, *op. cit.* p. 39, citing Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union,* at 572, (1868), Robson, in *Committee on Ministers' Powers,* Minutes of Evidence, 52 (1932) and 4 Blackstone's *Commentaries,* 162.

[52] *Munn v. Illinois,* 94 U.S. 113; 24 L. Ed. 77 (1876).

[53] *Schmidt v. Board of Adjustment of Newark,* 9 N.J. 405; 88 A. 607 (1952).

ernments are not sovereign. They are creatures of delegated power,[54] and therefore:

> No municipality has inherent authority to enact ordinances whose validity and enforcement rest on general police powers. All powers of a municipality are derived from the State, but it cannot be doubted that the State may delegate its authority or some portion of it. The police power primarily inheres in the State, but if the State constitution does not forbid, the Legislature may delegate a part of such power to the municipal corporations of the State.[55]

The scope of power delegated to local governments is at the sole discretion of the State Legislature. But regardless of the limits of that delegation, the continued exercise of the police power remains subject to legislative direction unless the State constitution provides otherwise. Whether exercised by the State or local government, the police power continues to be elastic. One view of this elasticity which is shared by the courts of virtually every jurisdiction was supplied by the Minnesota court when it observed that:

> The police power, in its nature indefinable and quickly responsive, in the interests of the common welfare, to changing conditions, authorizes various restrictions upon the use of private property as social and economic changes come. A restriction which years ago, would have been intolerable and would have been thought an unconstitutional restriction of the owner's use of his property is accepted now without a thought that it invades a private right.[56]

The view of the Minnesota court has frequently been reflected by scholars of zoning. One of these commentators has suggested that examination of the law of police power regulation "will reveal the police power not as a fixed quantity, but as the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic." [57]

In summary, the boundaries of the police power can only be provisionally staked out. The clear reason for this is that the police power must remain sufficiently flexible to meet the changing needs of a growing society. A society in flux must be regulated by flexible laws. To be valid, a zoning ordinance must meet two tests. First, it must be calculated to promote the public welfare. Secondly, it must be reasonable. Both are somewhat murky guides and have been the subject of much discussion. The Supreme Court, for example, in laying down something of an "I know it when I see it" test of public welfare, has said that:

> The concept of public welfare is broad and inclusive . . . The values it represents are spiritual as well as physical, aesthetic as

[54] In California, the grant of zoning power to local government stems from three sources. The first is a general Constitutional grant of power which provides that any local government "may make and enforce . . . all such local, police, sanitary and other regulations as are not in conflict with the general laws." Cal. Const. Art. XI, Sec. 11. *In re Hang Kie,* 69 Cal. 149, 10 P. 327 (1886) was the first case to uphold an ordinance regulating land use pursuant to this authorization. The second is the so-called "home rule" section which applies to chartered cities and gives them exclusive legislative authority "in respect to municipal affairs," Cal. Const. Art. XI, Secs. 6, 8. The third is the Planning and Zoning Act, found in the Cal. Gov. Code at Sections 65100 to 65907. For citations and bibliography, see note 255 *infra.*

[55] *Miller v. Memphis,* 181 Tenn. (17 Beeler) 15; 178 S.W. 2d 382 (1944).

[56] *Stats v. Houghton,* 164 Minn. 146; 204 N.W. 569 (1925).

[57] Freund, *Police Power;* as quoted in Metzenbaum, *The Law of Zoning,* p. 90.

well as monetary. It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.[58]

The second test, that of reasonableness, has been said to embody four interrelated ideas:[59]

1. The regulation must relate to a proper legislative goal.
2. The regulation must not discriminate against similarly situated property owners.
3. The impact on the market value of the property must not be so severe as to be confiscatory.
4. The regulation must not be designed to accomplish an objective for which eminent domain would be more appropriate.

The question of land use regulation, like all other police power functions, falls squarely within the province of the legislative apparatus. The potential scope of the legislative concern is, as the Supreme Court put it, "broad and inclusive." As we shall see, however, the vital question is where regulation leaves off, and compensable taking begins once a proper legislative goal has been established.

There is some divergence in judicial attitude toward land use regulations. California courts have taken cognizance of the acute problems which confront government in a time and place of rapid development. From this awareness has come a deferential attitude toward legislative decisions which was summarized well in the case of *Lockard v. City of Los Angeles,* where the court noted that:

> In considering the scope or nature of appellate review in a case of this type we must keep in mind the fact that the courts are examining the act of a coordinate branch of the government . . . the legislature . . . in a field in which it has paramount authority, and not reviewing the decision of a lower tribunal or of a fact-finding body. Courts have nothing to do with the wisdom of laws or regulations, and the legislative power must be upheld unless manifestly abused so as to infringe on constitutional guarantees . . . the function of this court is to determine whether the record shows a reasonable basis for the action of the zoning authorities, and, if the reasonableness of the ordinance is fairly debatable, the legislative determination will not be disturbed.[60]

Protecting the "constitutional guarantees" over which the *Lockard* court stood guard ultimately turns on the question of whether the regulation has gone so far as to become a taking.

Article I, Section 14, of the California Constitution provides that "Private property shall not be taken or damaged for public use with-

[58] *Berman v. Parker,* 348 U.S. 26, 33; 75 S. Ct. 98 (1954). It should be pointed out that *Berman v. Parker* was an eminent domain and not a police power case. It dealt with slum clearance and not with land use regulation, but one must, as one state court put it, "consider such distinction to be immaterial in considering the scope of the police power and its exercise to promote the general welfare." *State v. Wieland,* 69 N.W. 2d 217, 223 (Wis. 1955). One commentator has declared that, "What the Supreme Court said in *Berman v. Parker* should be a powerful inducement to courts throughout the land to repudiate the notion that the police power may not be employed to promote aesthetic progress—whether through zoning or other regulatory measures." Schwarts, *op. cit.,* p. 227.

[59] Ira Michael Heyman, "Planning and the Constitution: The Great 'Property Rights' Fallacy," *Cry California,* Summer 1968, p. 31.

[60] *Lockard v. City of Los Angeles,* 33 Cal. 2d 453, 461–2; 202 P. 2d 38, 43 (1949).

out just compensation having first been made to, or paid into court for, the owner . . . " This provision, along with the fifth and fourteenth amendments to the Federal Constitution, requires that where land is taken for the public good, the general public must pay.[61]

To establish an affirmative taking, it is not enough for the landowner to show a diminution in market value as a result of the restriction. Virtually every restriction has such an effect. One relatively recent case restated the traditional California view by saying that "(i)t has been settled by numerous decisions that the rule in California is that financial loss to a property owner is not a sufficient ground for declaring a zoning ordinance invalid." [62] As one commentator put it:

> It has always been held that the legislature may make police regulations, although they may interfere with the full enjoyment of private property and although no compensation is given.[63]

In introducing the distinction between regulation and taking, one court expressed the common view that:

> It is a well recognized principle in the decisions of the State and Federal courts that the citizen holds his property subject not only to the exercise of the right of eminent domain by the State, but also subject to the lawful exercise of the police power by the legislature; in the one case property is taken by condemnation and due compensation; the other, . . . are (sic) damnum abseque injuria. (injury without damages).[64]

Mr. Justice Harlan was not a man to resort to the lawyerly ploy of lapsing into Latin just when the going got tough. Shortly after the turn of the century, he summarized the doctrine of noncompensable regulation in these expansive terms.

> If the injury complained of is only incidental to the legitimate exercise of governmental powers for the public good, then there is no 'taking' of property for public use, and a right of compensation, on account of such injury does not attach under the Constitution.[65]

In attempting to strike the line between regulation and appropriation, it is helpful to bear in mind that:

> . . . all property like other social and conventional rights, are (sic) subject to such reasonable (police power) restraint and regulations established by law, as the Legislature under the governing and controlling power vested in them, may think necessary and expedient. *This is very different from the right of eminent domain*

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[61] The Federal Constitution does not preclude police power land use restrictions which have the effect of substantially depressing the market value of the regulated land. See Sax, "Takings and the Police Power," 74 *Yale L. J.* 37, 50–60 (1964). *Goldblatt v. Town of Hempstead,* 369 U.S. 590 (1962) and *Consolidated Rock Products Co. v. City of Los Angeles,* 57 Cal. 2d 515, 20 Cal. Rptr. 638, 370 P. 2d 342, appeal dismissed, 371 U.S. 36 (1962).

[62] *Hamer v. Town of Ross,* 22 Cal. Rptr. 686, 689, (1962). 59 Cal. 2d 776, 31 Cal. Rptr. 335 (1963).

[63] *Sedwick on Statutory and Constitutional Law* at p. 506. See also Metzenbaum, *op. cit.,* p. 90.

[64] *Tenement House Dept. v. Moeschen,* 179 N.Y. 325, 330 (1904).

[65] *Chicago and Burlington R.R. Co. v. Illinois,* 200 U.S. 561, 26 S. Ct. 341 (1905).

which is the right of government to *take* and to *appropriate* private property . . ."[66]

In an opinion which concurred with this view, one court expressed the distinction between regulation and taking thus:

> Eminent domain takes property because it is useful to the public; the police power regulates the use of property or impairs rights therein because the free exercise of these rights therein is detrimental to the public interest.
> The line between these powers is a difficult one to hold, and it is not surprising that they have occasionally been confused.[67]

The distinction is indeed difficult to hold. In view of the vagueness of such words as "taking" and "damaged" found in the statutes, and the expansive limitations such as "general welfare" found in the case law, the line between regulation and eminent domain must inevitably be drawn from the trend of decisions in each jurisdiction. The line, once struck, is not easily retained. The law of police power land use regulation is of necessity rapidly evolving. California courts have contributed measurably to the direction of that evolution. In a case which predated *Euclid,* the California court recognized that:

> . . . the police power, as such, is not confined within the narrow circumscription of precedents, resting upon past conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public . . . as a commonwealth develops politically, economically and socially, the police power likewise develops . . . to meet the changed and changing conditions.[68]

Social Change and the Police Power

At no time in history has the change noted in the *Miller* case come so rapidly. The history of man has been characterized by a gradual coalescing of population, of inward migration. For economic and social reasons as well as for mutual protection, man has slowly constructed an urban culture. This gradual urbanization has brought with it the need for ever greater governmental control, first to prevent fire and disease, later to create a more livable environment.

This pattern has been radically altered in the past few decades, not only in California, but across the nation. Better transportation, increased leisure time, an expanded middle class and inner-city decay have caused a mass exodus from the city.[69] The age-old pattern has been reversed. As those who can afford to evacuate the city do so, those who cannot are left behind. The result is economic segregation which results in profound cultural deprivation for those who are physically

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[66] *Sedwick on Statutory and Constitutional Law* at p. 507 as quoted in Metzenbaum, *op. cit.* pp. 70–71.

[67] *Town of Windsor v. Whitney,* 95 Conn. 357; 111 Atle. 354 (1920). The Supreme Court has concurred saying: "There is no set formula to determine where regulation ends and taking begins." *Goldblatt v. Hempstead,* 369 U.S. 590, 594 (1962).

[68] *Miller v. Board of Public Works,* 195 Cal. 497; 234 Pac. 381 (1925).

[69] A Census Bureau report published in June of 1969 revealed that in the two previous years the rate of white emigration from the nation's central cities was three times that of the previous six years. In 1969 this outmigration of whites rose to 500,000 per year. At the same time the report noted a dramatic increase in racial minority concentration in the central cities. Conrad Taeuber, Report to House of Representatives, Subcommittee on Urban Growth, June 1969.

cut off from the cultural and economic means to break out of the poverty circle.[70]

The problems spawned by this pattern of outward migration to the suburbs have been exaggerated by the massive influx of population to California from other states, nearly all of which takes place in the urban fringe.[71] In the face of this rapid metamorphosis, California courts recognize, now more than ever, that land use regulation is the *sine qua non* for orderly growth. As one authority has put it:

> . . . California courts will continue to . . . sustain regulations even though there are some analogous precedents available to invalidate them. Courts cannot ignore the consequences of their rulings, and the consequences of unfavorable ruling on regulation would be substantially detrimental to what might be described as the long-run public interest in planning to cope with problems spawned by rapidly increasing urban chaos.[72]

Contrasting California Law

As we have seen, any police power regulation must be reasonable if it is to be upheld. The reasonableness test subsumes two facets which courts treat differently. Courts look at the *purpose* of the ordinance as well as its *effect* on the landowner. This is not to say that regulation cases can be neatly lumped into two categories. Courts look at both purpose and effect. They balance the public purpose against the detriment to the landowner. These two aspects of reasonableness are therefore quite interrelated. At times they are so interrelated that the utility of the distinction for purposes of analysis is doubtful.

Central to the analysis of police power land use control is the notion of "public purpose." Courts use the phrase public purpose to express two diametrically opposed concepts. On the one hand, public purpose is used to identify a justifiable goal. To be upheld, a zoning ordinance must promote some public interest such as health, safety or general welfare. Such a public purpose is a necessary ingredient in any police power regulation and its presence is a reason to uphold the zoning ordinance. On the other hand, courts also use the words public purpose as synonymous with "municipal function" or "community service." When used in this sense "public purpose" is used to mean a purpose for which eminent domain should be used. To distinguish between these two senses of "public purpose," the phrase "municipal purpose" will be used to mean an objective which can only be achieved through direct compensation to the landowner.

Since both eminent domain and police power regulation must be exercised in the name of some public purpose, this distinction is important. Perhaps the following statement of the New Jersey court illustrates as well as any the need to distinguish between the two sorts of public purpose which confront the courts.

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[70] See Williams, *"Planning Law and Democratic Living,"* 20 Law and Contemp. Prob. 317 (1955); Jacobs, *"The Death and Life of Great American Cities"* (1961).

[71] California continues to be an urbanizing state as the fringes of existing cities coalesce and as new urban development leapfrogs into previously rural areas. In 1950, 84.9% of the population resided in metropolitan areas. In 1970, 86.6% is expected to live in urban areas. California State Office of Planning, *California State Development Plan Program,* 1968. Table 5, p. 65.

[72] I. Michael Heyman, *Powers,* Vol. I, "Regulation, Legal Questions." Prepared for San Francisco Bay Conservation and Development Commission, April, 1968, p. 44.

> While the issue of regulation as against taking is always a matter of degree, there can be no question but that the line has been crossed where the *purpose* and practical effect of the regulation is to appropriate private property for a flood water detention basin or open space. These are laudable *public purposes* and we do not doubt the high-mindedness of their motivation . . .[73]

It is helpful to an understanding of the judicial attitude in this area to recognize the categories of cases which present themselves. Many courts view restrictions calculated to prevent external harm to neighboring landowners—as in a public nuisance case—in a different light from those designed to provide a purely municipal facility such as a park. The distinction is between zoning to prevent public harm on the one hand, and zoning to compel the gratuitous grant of affirmative public benefit on the other.

A second line of cases concerns regulations which have the effect of eliminating substantially all economic use of the land. Assuming a valid legislative goal, many courts treat these cases differently from those which have the effect of forcing the landowner to bear more than his fair share of a public project.

The remainder of this section will look at the way in which California courts treat these considerations as contrasted with the judicial attitude of other jurisdictions.

Purpose of Regulation

The case of *City of Plainfield v. Borough of Middlesex*[74] is illustrative of one commonly held judicial view. It stands for the proposition that a regulation may be invalid if it is used to accomplish a purely municipal purpose.

The City of Plainfield owned a parcel of land located in the neighboring Borough of Middlesex. The land had formerly served as a sewage treatment plant. Plainfield was interested in selling the land. Middlesex attempted, by means of a bond election, to raise the funds necessary to buy the land. The measure failed. The Borough offered Plainfield a lesser amount, but the tender was rejected.

Unable to buy the land, Middlesex passed an ordinance restricting the use of the property to schools and parks. The clear purpose of the ordinance was to prevent development and thereby compel Plainfield to sell the land to its friendly neighbor Middlesex. The court found that while the land was well suited for park use, the Borough's action was unreasonable. In a key paragraph the court said:

> The net result of the ordinance is to destroy for all practical purposes the full value of plaintiffs' property and to leave plaintiffs at the mercy of defendant as to the price that the latter may be willing to pay. However desirable the property may be to defendant for parks and playgrounds, defendant cannot use its power to zone as a method of depreciating the value of the property for the purpose of purchase.[75]

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[73] *Morris County Land Improvement Co. v. Township of Parsippany—Troy Hills,* 40 N.J. 539, 139 A 2d, 233 at 241–42 (1963).
[74] *City of Plainfield v. Borough of Middlesex,* 69 N.J. Super. 136; 173 A. 2d 785 (1961).
[75] id. at 173 A. 2d 787.

Vernon Park Realty Inc. v. City of Mount Vernon[76] is another such case. The litigation concerned an 86,000 square foot parcel which was encircled by commercial development. In 1922 it had been zoned business, but in 1927 it had been rezoned as residential. Prior to the rezoning it had been used as a train station parking lot. The 1927 ordinance grandfathered in the nonconforming use; indeed the city grew to rely upon the presence of the lot.

In 1951 plaintiff bought the parking lot, intending to construct a shopping center on the property. He brought suit to challenge the residential zoning restriction. In 1952 the city again rezoned the property, this time as DPD, or Designed Parking District. The effect of the DPD zone was to restrict plaintiff's use of the land to that of an automobile parking lot.

The reason for the parking lot rezone was that the city had come to depend on the property to alleviate some of the pressure on downtown parking space.

Despite the public need for parking lots, and the fact that plaintiff could realize some economic return from that use, the court struck down the ordinance, saying:

> However compelling and acute the community traffic problem may be, its solution does not lie in placing an undue and uncompensated burden on the individual owner of a single parcel of land in the guise of regulation, even for a public purpose.[77]

The *Vernon Park*[78] case seems to stand for the proposition that zoning may not be used to compel a landowner to confer an affirmative benefit upon the community even if the restriction allows the landowner to profit from the restricted use. Where the community seeks to exercise the police power to provide municipal services, then eminent domain and not zoning is the route which must be followed.

McCarthy v. Manhattan Beach[79] is a California case which paralleled *Plainfield* and *Vernon Park* in many respects. Plaintiff had owned a stretch of beach for a number of years. It had been used by the public without charge since the turn of the century. At one point it had been zoned for single family dwellings. Plaintiff had asked that the property be rezoned for commercial recreation. Several years after the land had been so rezoned, the State began an eminent domain action to obtain

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[76] *Vernon Park Realty Inc. v. City of Mount Vernon,* 307 N.Y. 493, 121 N.E. 2d 517 (1954).

[77] 121 N.E. 2d 519.

[78] Cases like *Plainfield* and *Vernon Park* are cases where the zoning power was used to promote a municipal function such as schools, parks and parking lots. These cases should be distinguished from cases where no such municipal purpose is being promoted, but where a public purpose for the restriction is lacking. *Reynolds v. Barrett,* 12 Cal. 2d 244; 83 P. 2d 29 (1938). In that case the city had zoned an entire section of the city as commercial and industrial, but had zoned the plaintiff's lot as residential. In view of the fact that the plaintiff's land was surrounded by business properties, the court said, ". . . a city, purporting to act under its police power, cannot create a business district, and entirely within it create an 'island' of one lot restricted to residential purposes when no rational reason exists for such a classification." Id. at 12 Cal. 2d 251. See also *Skalko v. Sunnyvale,* 14 Cal. 2d 213; 93 P. 2d 93 (1939); where no public purpose was served in allowing a cannery to be constructed across the street from a home zoned exclusively residential. *People v. Hawley,* 207 Cal. 395; 279 P. 136 (1929) invalidating a Los Angeles ordinance prohibiting extraction of rock and gravel. It should be made clear, however, that the diminution of value in spot zoning cases such as *Plainfield, Vernon Park* and *Reynolds,* may be as important as the alleged lack of public purpose. This is seen from the fact that "islands" of more restricted use are far more frequently held invalid than "islands" of less restricted use.

[79] *McCarthy v. Manhattan Beach,* 41 Cal. 2d 879; 264 P. 2d 932 (1953).

the beach as a park. Before the State's action came to trial, plaintiff began an action to have the land again zoned residential.

The landowner alleged that the restriction to beach and recreation purposes prevented him from realizing any income from the property. He asserted that the one time he had erected a fence in order to charge admission to the beach, it had been demolished by a contentious public. As a result, he argued, the property was not productive of income.[80] It was not for him to point out that if his property were rezoned, his award in the eminent domain action would be increased substantially.

The plaintiff's arguments were a cross between those which had won the *Plainfield* case, and those advanced successfully in *Vernon Park.* As in *Plainfield,* the plaintiff argued that the restriction was a ruse intended to hold the price of acquisition down. From *Vernon Park* he borrowed the argument that to restrict the use of his land to what is essentially a municipal purpose forces him to fulfill a community need for recreational open space which he had not created. He lost on both arguments.

The ordinance was upheld in part on the ground that the beach was in the nature of a public asset,[81] and that development would therefore not be in the public interest. An equally important basis for the decision, however, was that the plaintiff failed to substantiate his claim that the property had been rendered economically unproductive by the zoning ordinance.

Underlying all of this was the eminent domain action which had been pending for two years and the question of how safe it would be to build homes on the beach if the zone were changed. It may be true that even in California land may not be zoned for public open space simply because to do so would benefit the public. However, it is not clear from the *McCarthy* case whether the result is different with respect to land which is a unique public resource *AND* is also unsuited for any other use. It would appear that under *McCarthy* it is enough that the land is a unique public asset. But it is also true that the court spoke in terms of whether the city could prohibit construction of housing, not whether it could zone an area for beach recreational use only. It is, therefore, possible to explain the *McCarthy* case on the ground that the suitability of the land there involved for residences was fairly debatable and that there was simply an insufficient showing that the land could not profitably be used for beach purposes.

In view of these important issues, it is difficult to cavalierly cite the case as establishing black letter law in California. But taken with analogous cases, it can be said that California courts are more willing than those of other states to uphold a land use regulation if any social, economic or other rational justification can be found to support it.

In his exhaustive report to the San Francisco Bay Conservation and Development Commission Professor Heyman states:

[80] For a thorough analysis of the McCarthy case, see Prof. I. Michael Heyman, "Open Space and the Police Power," in Herring, ed., *Open Space and the Law,* Institute of Governmental Studies, University of California, Berkeley, 1965, pp. 13–16. See also Heyman, note 72 *supra* pp. 39–40.

[81] 41 Cal. 2d at 886, 264 P. 2d at 936. The court found relevant the fact that the City had included plaintiff's beach as part of a recreation area in the Master Plan and identified it as a major asset of the community which should be protected against development. The court was therefore reluctant to draw a distinction between regulations designed to prevent external harm and those intended to promote a public benefit. See Heyman, *Powers,* p. 40.

> California courts characteristically defer to legislative judgments. Judicial deference is most notable to legislative definitions of worthy public objectives and legislative choice of the means . . . best designed to accomplish them.[82]

Substantiation of this conclusion is ubiquitous in zoning cases. *Ayres v. City of Los Angeles*[83] and *Bringle v. Board of Supervisors*[84] indicate the extent to which the police power may be employed in restricting land use. They indicate at least two things. First, a land owner may be compelled to dedicate a part of his property to public use even if he did not create the need for which the land is sought to be used. Secondly, a city may use official sanctions such as building permits, etc., to bargain with landowners in municipal projects such as street widening.

Ayres was a subdivision case in which the city compelled the developer to dedicate a substantial strip of his land to the city in exchange for municipal approval of his subdivision map.[85] The developer contended that it was a taking by police power extortion. He pointed out, and it was never denied, that "the city contemplated taking the property (by eminent domain) for the purposes indicated in any event", and further, "that the benefit to the lot owners and the tract will be relatively small compared to the beneficial return to the city at large . . . "[86]

The court was, in Professor Heyman's words, "less than vigorous in requiring that contributions of land exacted in return for development permission must be related to costs created by the private developer."[87] It finally concluded that "in a growing metropolitan area each additional subdivision adds to the traffic burden,"[88] thereby avoiding the developer's charge.

The land in *Bringle* was zoned for agriculture. The landowner petitioned for an extension of a variance to allow the land to be used as a storage yard. Petitioner argued that since the land was totally unproductive as zoned, and that only four vehicles were used in his business, the variance was "required." The county agreed to grant the variance if the landowner would dedicate a strip of county road frontage 30 feet wide and 132 feet long to be used for street widening purposes, pursuant to the county Master Plan.

There was no finding that the proposed use would create a need for street widening. The landowner argued that such a condition amounted to an uncompensated taking. The court disagreed, saying that while there was no recorded evidence showing a relationship between the variance and the dedication, it would assume that widening the road was related to the proposed use.

Such an assumption was doubly suspect. First, it failed to explain the fact that the Master Plan provision for widening predated the variance application. Second, it ignored the fact that neighboring land

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[82] Heyman, *Powers*, p. 17.
[83] *Ayres v. City of Los Angeles*, 34 Cal. 2d 31, 207 P. 2d 1 (1949).
[84] *Bringle v. Board of Supervisors*, 54 Cal. 2d 86, 351 P. 2d 765 (1960).
[85] Johnson, "Constitutionality of Subdivision Control Exactions: The Quest for a Rationale," 52 *Cornell L.Q.* 871 (1967); Hanna, "Subdivisions: Conditions Imposed by Local Government," 6 *Santa Clara Lawyer* 172 (1966).
[86] *Ayres v. City Council of Los Angeles*, 34 Cal. 2d 31 at 40.
[87] Heyman, *Powers*, p. 40.
[88] *Ayres v. Los Angeles*, 34 Cal. 2d 31 at 41.

was being acquired for road widening through the use of eminent domain.

But before any sweeping conclusions may be drawn from *Ayres* and *Bringle* one must consider the relatively recent case of *Mid-Way Cabinet v. San Joaquin.*[89] While not on all fours with either *Ayres* or *Bringle,* the *Mid-Way Cabinet* case can be said to have modified those earlier cases. As in *Ayres* and *Bringle* the county had adopted a plan which involved condemning certain highway frontage from Mid-Way. Indeed the county had already begun condemnation proceedings when Mid-Way asked for a building permit and the extension of an earlier use permit. The county offered to grant the permits if Mid-Way would barter away what San Joaquin County was then in the process of taking by eminent domain.

The case turned on the question of whether the new building would add traffic to the highway. The court noted that the land was in a rural portion of a notoriously rural county, that the area was not expected to develop in the foreseeable future, and that cabinet business was not likely to draw more traffic after the building than it had previously. The court read the record as disclosing "not the slightest hint that there would be an appreciable increase in traffic"[90] and concluded that "the conditions imposed upon Mid-Way are not so imposed because of any of its activities relating to that portion of the sometime-to-be-built expressway . . . They were imposed because respondents seem to conceive that the burden of the cost of access and highway widening rights of way . . . can be shifted by government onto adjoining landowners."[91] The fact that this is precisely what was done in *Ayres* and *Bringle* failed to sway the court.[92]

However, it would be a mistake to read *Mid-Way* as marking a significant retreat from the position of *Ayres* and *Bringle.* The dicta concerning the efficacy of shifting the cost of municipal improvements is of questionable significance since the court found a) no compelling public need and b) no assurance that the bartered-for land would in fact be used for highway purposes in the foreseeable future.

Taken together these cases seem to say that when the purpose being served is of compelling importance, then the fact that a private landowner is incidentally forced to bear the burden of providing a municipal service is given less weight. It is also possible that California courts construe the grant of a governmental privilege such as a variance as a form of compensation. The latter explanation is given added weight when one notes that in *Bringle* neighboring landowners were given financial compensation for similar frontage to that acquired from the plaintiff in exchange for the variance.

If the latter suggestion has any merit, then it may be that the police power is amenable to both the regulation and in some cases the actual acquisition of open space land in exchange for governmental privileges such as building permits, variances, subdivision approval, or perhaps use-related assessment.

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[89] *Mid-Way Cabinet Fixture Manufacturing v. County of San Joaquin,* 257 Cal. App. 2d 181, 65 Cal. Rptr. 37 (1967).

[90] *Mid-Way Cabinet v. San Joaquin,* 257 Cal. App. 2d 181, 185.

[91] *Mid-Way Cabinet v. San Joaquin,* 257 Cal. App. 2d 181, 191–192.

[92] For another California case upholding such a shift see *City of Buena Park v. Boyar,* 186 Cal. App. 2d 61, 8 Cal. Rptr. 674. See also *Brous v. Smith,* 304 N.Y. 164, 106 N.E. 2d 503.

Given the traditional willingness of California courts to uphold police power regulations which demonstrably serve some public purpose, it is difficult to conceive of a California court deciding a case like *Morris County Land Improvement Co. v. Township of Parsippany—Troy Hills*[93] as it was decided by the New Jersey Court. Here 1500 acres of marshland, at one time part of Lake Passaic, were zoned for agriculture, wildlife refuge and recreation. The town had recently begun to feel the pressure of urbanization. Since the swamp was a valuable natural asset to the community, it had been restricted to uses which were compatible with its natural condition. The land within the zone was owned in part by a conservationist group, which had lobbied through the ordinance, and in part by plaintiff.

> The court struck down the ordinance saying at *139 A 2d, 241–42:* These are laudable public purposes and we do not doubt the high-mindedness of their motivation. . . (But both) public uses (flood water detention basin and open space) are necessarily so all-encompassing as practically to prevent the exercise by a private owner of any worth-while rights or benefits in the land. So public acquisition rather than regulation is required.[94]

It is difficult to determine from the opinion whether the court invalidated the ordinance because it was designed to promote a purely municipal purpose or because it divested the plaintiff of any beneficial use. The court gives both factors equal weight.

Clearly one purpose of the ordinance was to preserve a quasi public asset, a justification which the California court had accepted in *McCarthy*. Another purpose was to control floods, traditionally considered well within the province of police power regulation. Both of these purposes have been upheld in California. *Metro Realty v. County of El Dorado*[95] is a case in point. In *Metro* the county had identified thirty-one potential reservoir sites. Pending the completion of a long term development study, the county had prevented any development on the proposed reservoir sites. The zoning restriction was to terminate in three years, at which time the county water plan was to be completed. The court balanced the long range community benefit against the temporary inconvenience to the landowner and upheld the zone.

It has been suggested that the *Morris County* case is distinguishable from cases like *Hadacheck v. Sebastian* on the ground that in *Morris County,* the landowner was being compelled to bestow a gratuitous public benefit. In cases like *Hadacheck* he is being forced to forego a

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[93] *Morris County Land Improvement Co.* v. *Township of Parsippany—Troy Hills,* 40 N.J. 593; 193 A. 2d 233 (1963).

[94] One leading authority, Jacob H. Beuscher, has written that "I'm not ready to agree that Justice Hall's opinion in the New Jersey marsh case settles for all time and all marshes the invalidity of zoning which prohibits filling or development. In another case
—evidence of adverse public health consequences may be more impressive;
—proof of direct substantial harmful effects on other landowners may be more convincing, thus rooting the zoning in the rigorous soil of nuisance law;
—income producing uses like hunting leases, the raising of marsh hay might be practical possibilities; or
—the zoners might be more forthright and not attempt as in the Parsippany case to hide an absolute bar against development behind not one, but two complicated permit application procedures."
Beuscher, "Comments on Mrs. Strong's 'Controls and Incentives for Open Space'" in *Open Space Through Water Resource Protection* (Anna Louis Strong Ed.) Institute for Environmental Studies, Univ. Penn. (1965), p. 78.

[95] *Metro Realty v. County of El Dorado,* 35 Cal. Rptr. 480 (Cal. App. Div. 1963). But see *Peacock v. County of Sacramento,* 77 Cal. Rptr. 391 (1969).

use which causes tangible external harm to the public.[96] Under this harm-benefit analysis, owners who cause public harm can be enjoined without compensation, while those who provide affirmative benefits must have the cost apportioned among the public beneficiaries.[97]

Professor Heyman contends that while this harm-benefit theory is logically tenable and affords an ethical means of distributing social costs, it is not followed in California. He concludes, after extensive analysis, that "California courts in regulation cases have been quite insensitive to the cost-allocation line set forth in the harm-benefit approach."[98]

To substantiate this conclusion, it is useful to compare the judicial treatment of restrictions designed to stave off development. Set-back cases are of this genre. Courts vary markedly in their attitude toward these cases. The case of *Galt v. Cook County*[99] represents one view. Put in issue there was the validity of a set-back regulation which was admittedly designed to retard development. The Illinois court struck down the regulation on the ground that the motive of the zoning body in enacting the ordinance was inappropriate. It pointed out that the ordinance was ancillary to a street-widening program and was intended to freeze acquisition costs. The case seems to suggest that in Illinois such a motive will tarnish an otherwise valid regulation.

Such has never been the law of California. Indeed, as indicated by the excerpt from *Lockard v. Los Angeles,* quoted above at page 28, the court would never reach the question of motive in a case like *Galt.* To see what a California court would do if it were forced to face the issue, one need look no further than *Hunter v. Adams.*[100] In *Hunter,* all development within a redevelopment area had been frozen in order to stabilize acquisition costs. Plaintiff challenged the denial of a building permit on the same grounds advanced in *Galt.* The restriction was upheld.

But *Southern Pacific Co. v. City of Los Angeles,*[101] more than either *Lockard* or *Hunter,* indicates the gulf between the view expressed in *Galt* and that held by the courts of California. The *Southern Pacific* case dealt with an ordinance which was, by any test, more restrictive than that disapproved in *Galt.* The ordinance conditioned the granting of a building permit on the dedication of a street-front strip to the city for street widening purposes. A line of cases in numerous jurisdictions have upheld such dedications, usually in subdivision cases,

[96] Heyman note 72 *supra,* pp. 36–37, citing Dunham, "A Legal and Economic Basis for City Planning," 58 *Col. L. Rev.* 650 (1958). Dunham, "Flood Control Via the Police Power," 107 *U. Pa. L. Rev.* 1098 (1959); Dunham, "Griggs v. Allegheny County in Perspective: Thirty Years of Supreme Court Expropriation Law," in Kurland, ed., *Sup. Ct. Rev. 1962–1963 Term.* (University of Chicago Press, 1964).

[97] One good statement of the harm-benefit theory is found in Dunham, "A Legal and Economic Basis for City Planning," 58 *Colum. L. Rev.* 650, (1958) at 669. "Where the legislation was upheld, the purpose and effect of the legislation was to allocate to a land use the costs which, but for the legislation, the activity would impose on other owners without compensation. In each instance where the legislation was struck down, the purpose and effect of the legislation was to compel one or more particular owners to furnish without compensation a benefit wanted by the public." An earlier writer put it more succinctly. "(I)t may be said that the state takes property by eminent domain because it is useful to the public, and under the police power because it is harmful . . ." Freund, *The Police Power, Public Policy and Constitutional Rights* (1904) at 546–547.

[98] Heyman, *op. cit.,* note 72 *supra,* p. 38.

[99] *Galt v. Cook County,* 405 Ill. 396, 91 N.E. 2d 395 (1950).

[100] *Hunter v. Adams,* 180 Cal. App. 2d 511; 4 Cal. Rptr. 776 (1960).

[101] *Southern Pacific Co. v. City of Los Angeles,* 51 Cal. Rptr. 197 (1966). *Appeal dismissed,* 385 U.S. 657, 87 S. Ct. 767 (1967).

where the development by the landowner creates the need for the street improvement.

The ordinance in the *Southern Pacific* case was not justified on this rationale. There was no showing that the building contemplated by the permit would necessarily impose an additional traffic burden, thereby necessitating street expansion. The need for street expansion predated the building and could only be exaggerated by the added commerce brought to the Southern Pacific warehouse. Indeed, the D.C.A. in *Southern Pacific* expressly rejects the argument that the value of the dedicated land approximate the municipal cost generated by the warehouse.[102]

The court concluded that in view of the difficulty of financing a needed program of street widening, the mandatory dedication condition was not unreasonable. It was candidly construed as ". . . another application of the principle that the exercise of police power in traffic regulation cases is simply a risk the property owner assumes when he lives in modern society under modern traffic conditions . . . and particularly if he lives in the metropolitan area of Los Angeles."[103]

The significance of the *Southern Pacific* case in the field of open space regulation cannot be ignored.[104] The case stands for the proposition that once a valid legislative purpose has been found, a landowner may be compelled to dedicate part of his land to public use in exchange for the grant of some governmental sanction (e.g., subdivision map approval, zone variance, building permit, etc.). This, despite the fact that the purpose for which the land is acquired has no relation to the land use sought by the landowner and despite the fact that the landowner may have played no part in creating the need for such governmental acquisition.

Effect of Regulation

As we have seen, courts in some jurisdictions look closely at the effect of a regulation on the market value of the subject property. Numerous California cases, on the other hand, have held that diminution of market value alone is not sufficient to invalidate an otherwise proper regulation. The cases examined thus far, however, have not drawn a clear line between regulation and the constitutional prohibition against "taking . . . without just compensation." *Consolidated Rock Products Co. v. City of Los Angeles,*[105] comes as close to drawing that line as any case yet decided in California.

Consolidated Rock concerned an ordinance which prohibited the quarrying of rock in an area adjacent to the Sunland-Tujunga area of Los Angeles County. Consolidated Rock Company was the lessee of "the second largest alluvial cone of rock, sand and gravel in Los

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[102] 242 Cal. App. 2d 38 at 50 limiting *Los Angeles v. Offner,* 55 Cal. 2d 103, 10 Cal. Rptr. 470, 358 P. 2d 926 to its facts. See also 242 Cal. App. 2d 38 at 47 where the court states that if appellant "desires the benefits resulting from the improvement or change in the character of the land, it must meet any reasonable condition imposed by respondents before the issuance of a building permit." Nowhere does the court hint that those conditions must relate directly to the proposed use.

[103] 242 Cal. App. 2d 38 at 46–47, 51 Cal. Rptr. at 201–02 quoting *Ayres* and citing *People v. Ayon,* 54 Cal. 2d 217, 224, 5 Cal. Rptr. 151, 352 P. 2d 519.

[104] For detailed analysis of the *Southern Pacific* case and its applicability to open space control, see Heyman, note 72 *supra,* pp. 62–65; see also 4 San Diego L. Rev. 233 (1966).

[105] *Consolidated Rock Products Co. v. City of Los Angeles,* 57 Cal. 2d 515; 20 Cal. Rptr. 638; 370 P. 2d 34a; *Appeal dismissed.* 371 U.S. 36 (1962). See Note, 50 *Calif. L. Rev.* 896.

Angeles County." The property was quite valuable for the production of gravel, but the trial court branded as "preposterous" any assertion that the property had any value for other purposes. The latter conclusion was reached after personal inspection by the judge as well as unrebutted evidence that the land was subject to periodic flooding.

Plaintiff sought injunctive and declaratory relief alleging (a) denial of due process; (b) denial of equal protection; (c) taking without compensation; (d) discrimination. Much of the opinion is devoted to distinguishing the older cases predating zoning relied upon by the plaintiff from the cases which began with *Hadacheck* and *Miller v. Board of Public Works* cited above. In this analysis, the court relied heavily on the well established doctrine, that if reasonable men could differ, the restriction must be upheld.[106]

Justice Dooling pointed out that the land in question was near an area which had a reputation as a haven for those suffering from respiratory ailments. The argument had been made by the city that to allow rock extraction would cause dust and noise which could be harmful to those who had been attracted to the area in search of non-dusty (if not smog free) air. The reasonable doubt was thus established.

Plaintiff's argument was that if such be the case, compensation is the answer. Plaintiff resurrected the argument which had been anticipated in *Hadacheck v. Sebastian* that rock and gravel are where one finds them and can hardly be transported prior to extraction. Consolidated argued further that since the property had no value for any other purpose, to prohibit quarrying was to prohibit all possible use. To so do, they concluded, was to take the property for public use.

Justice Dooling considered the former argument to be equally true of nearly every parcel of property and every land use. That is to say, there is a use for which every parcel is best adapted. To accept plaintiff's argument would paralyze government to control these economically optimum uses. The court disagreed with the second argument as well, pointing to several dubious uses which might be made of the property, saying:

> There was testimony before the legislative body that the property could be successfully devoted to certain other uses, i.e., for stabling horses, cattle feeding and grazing, chicken raising, dog kennels, fish hatcheries, golf courses, certain types of horticulture, and recreation.[107]

But the court went on to concede that:

> . . . in relation to its value for the extraction of rock, sand and gravel, the value of the property for any of the described uses is relatively small if not minimal, and that as to a considerable part of it seasonal flooding might prevent its continuous use for any purpose. However, the very essence of the police power as differentiated from the power of eminent domain is that the deprivation of individual rights and property cannot prevent its operation,

[106] *Wilkins v. San Bernardino,* 162 P. 2d 711–717 (1945) "The power to declare zoning ordinances unconstitutional only should be exercised where no substantial reason exists to support the determination of the city council. If the reasonableness of the ordinance is reasonably debatable, the ordinance must be upheld." Citing *Reynolds v. Barrett,* 83 P. 2d 29, *Zahn v. Board of Public Works,* 274 U.S. 325, 47 S. Ct. 594. See also 29 Cal. 2d 332, 175 P. 2d 542 (1946).

[107] *Consolidated Rock v. Los Angeles,* 57 Cal. Rptr. 2d at 530.

> once it is shown that its exercise is proper and that the method of its exercise is reasonably within the meaning of due process of law . . . (Citing *Beverly Oil Co. v. City of Los Angeles,* 40 Cal. 2d 552, 557-558).[108]

Since due process is what the courts say it is, the *Consolidated Rock* case seems to stand for the proposition that if a public purpose can be found or conceived, the Constitution will not stand in the way of regulation even if the property is reduced to a "minimal" value.

Taken together, the cases of *Southern Pacific v. Los Angeles* and *Consolidated Rock v. Los Angeles* point to a potent tool available to California government in the realm of open space preservation. *Consolidated Rock* held that the economic value of land may be totally eliminated ("made minimal") if the purpose of the regulation is valid. *Southern Pacific* held that a landowner may be compelled to dedicate part of his land to public use in exchange for the grant of a governmental privilege (building permit) even if the landowner did not create the need which the city seeks to resolve. It may be therefore that such power may be used to deny the owner the benefit, without direct compensation, from some interest in land (e.g., development right) even though the denial of that right seriously depresses the market value of the land affected. The question of whether that tool should be used is a political and not a legal question.

This view of California law appears to have been substantiated by the case of *Hamer v. Town of Ross,*[109] which came down a year after *Consolidated.* The court in the *Hamer* case said:

> Applying this (value diminution) principle in *Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal. 2d 515, 20 Cal Rptr. 638, 370 P. 2d 342, this court upheld an ordinance limiting the subject property to agricultural and residential use, even though it possessed great value for rock, sand and gravel extraction but 'no appreciable economic value' for any other purpose.[110]

It is difficult to determine the significance of the United States Supreme Court's dismissal of Consolidated Rock's appeal. The dismissal appears to mean that the U.S. Supreme Court is willing to go at least as far as the California Supreme Court in discounting the value diminution test of "taking."

The California Supreme Court appears not to have retreated from the position taken more than thirty years ago that "the police power is no longer limited to measures designed to protect life, safety, health and morals of the citizens, but extends to measures designed to promote the public convenience and general prosperity."[111]

Professor Heyman of the University of California Law School, in capsulizing the law of police power regulation in California has pointed out that:

> Rights in property have been defined and protected by courts only to the extent that such rights and protections are consistent with social, economic and political realities. How far regulation can

[108] IBID.
[109] *Hamer v. Town of Ross,* 59 Cal. 2d 776; 31 Cal. Rptr. 335, 382 P. 2d 375 (1963).
[110] *Id,* 59 Cal. 2d at 787, 31 Cal. Rptr. at 342.
[111] *Max Factor Co. v. Kinsman,* 5 Cal. 2d 446 at 461; 55 P. 2d 117 at 184 (1936).

go is basically a political question. It is safe to predict that California courts will only intervene in cases of clear discrimination—either because similarly situated owners are being treated unequally, or where demonstrable costs are imposed on just a few landowners while others, quite similarly situated, are tangibly benefitted by the regulation.[112]

The Continuum From Control to Dominion—Summary

There is no line on the continuum between control and dominion which separates regulation from taking. It does not even exist abstractly. Instead, it is drawn in response to an infinite number of factors within the factual context of each case. Courts draw the line by balancing the public need against the burden which is to be imposed against the landowner. Ethical notions of fairness play a leading role in this evaluation.[113]

When government regulates the use of land in a way which is highly onerous to the landowner and unnecessary to safeguard the public welfare, a potential taking has occurred. At this point the landowner may affirm the taking and demand compensation,[114] or he may attack the regulation and seek to have it removed.[115]

A number of early cases indicated that a regulation could be struck down if its effect was to remove all economic value from the property.[116]

In a landmark New York case the court stated:

> We have already pointed out that in this case which we are reviewing the plaintiff's land cannot, at present, or in the immediate future, be profitably or reasonably used without a violation of the restriction. An ordinance which *permanently* so restricts the use of property that it cannot be used for any reasonable purpose, goes, it is plain, beyond regulation, and must be recognized as a taking of the property. The only substantial difference, in such case, between restriction and actual taking, is that restriction leaves the owner subject to the burden of payment of taxation, while outright confiscation would relieve him of that burden.[117]

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[112] Heyman, *op. cit.*, note 59 *supra*, p. 33.

[113] See Hagman, *California Zoning Practice*, Sec. 3.7, p. 49; Michelman, "Property, Utility, and Fairness: Comments on the Ethical Foundations of 'Just Compensation' Law", 80 *Harv. L. Rev.* 1165 (1967); Sax, "Takings and the Police Power," 74 *Yale L. J.* 36 (1964); Heyman and Gilhood, "The Constitutionality of Imposing Increased Community Costs on New Suburban Residents Through Subdivision Exactions," 73 *Yale L. J.* 1119 (1964) Dunham, "A Legal and Economic Basis for City Planning," 58 *Colum. L. Rev.* 650 (1958).

[114] This approach is known as an action in inverse condemnation. It is widely believed, although wrongly, that inverse condemnation involves an attack upon the validity of the regulation. It does not. An action in inverse condemnation accepts the alleged taking and demands compensation. The petitioner asserts that a taking has occurred and asks to convey the land to government in exchange for payment. See: Mandelker, "Inverse Condemnation: The Constitutional Limits of Public Responsibility," 1966 *Wis. L. Rev.* 3, 47; Note, "Inverse Condemnation," 3 *Real Property, Probate and Trust Journal*, 173 (1968), and Hagmen, *California Zoning Practice*, (Cal. C.E.B.) Sec. 3.18, p. 56 (1969), *California Condemnation Practice* (Cal. C.E.B.) 1960, Ch. 9; Kratovil and Harrison, "Eminent Domain—Policy and Concept," 42 *Calif. L. Rev.* 596 (1954).

[115] See *Ayres v. City of Los Angeles*, 34 Cal. 2d 31, 207 P. 2d 1 (1949); *Bringle v. Board of Supervisors*, 54 Cal. 2d 86, 351 P. 2d 765 (1960); *Sommers v. Los Angeles*, 254 Cal. App. 2d 605, 62 Cal. Rptr. 523 (1967); *Southern Pacific v. Los Angeles*, 242 Cal. App. 2d 38, 51 Cal. Rptr. 197 (1966). But see *Mid-Way Cabinet Mfg. v. County of San Joaquin*, 257 Cal. App. 2d 181, 65 Cal Rptr. 37 (1967).

[116] See *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922).

[117] *Arvine Bay Construction Co. v. Thatcher*, 278 N.Y. 222, 15 N.E. 2d 587, 591–92 (1938).

In recent years few regulations have been overturned under this test [118] and where open space is concerned, courts are becoming increasingly willing to uphold stringent regulations.[119]

In a recent Hawaii case the plaintiff alleged that the agricultural zoning restriction on his land was unconstitutional because it was impossible to carry on an economically profitable enterprise under the restriction. In upholding the regulation, the court said:

> The record indicates that appellant's lands can be used for agricultural uses. Many various types of agricultural products are grown there. It might not be possible to carry on an economical agricultural enterprise, but this should not invalidate the Regulations. The court cannot strike down a zoning regulation merely because the landowner cannot carry on a profitable agricultural enterprise.
>
> One of the primary purposes of the Land Use Law is to prevent scattered subdivisions that require expanded public services and expenditures. Placing appellant's lands in the Urban or Rural District will be contrary to this purpose for appellant's lands are not contiguous to Urban or Rural Districts.[120]

A traditionally less liberal court reflected the growing trend of judicial attitude thus:

> The maximum possible enrichment of developers is not a controlling purpose . . . Unless there is a clear abuse of discretion by the zoning authority which results in an unwarranted discrimination against the property owner or an unreasonable deprivation of his property rights, the welfare of the public, rather than private gain, is a paramount consideration . . .[121]

It should be clear that there is no foundation in law to support the popular view which holds that whenever governmental action results in a deprivation of property or a reduction in its value, there is a taking or damaging for which compensation must be paid. Considerations of public welfare and government policy must be carefully evaluated. We have looked at what the courts consider to be important for the public welfare. We will now turn to an analysis of the taxation program which is at the heart of California's open space policy.

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[118] Sax, "Taking and the Police Power," 74 Yale L. J. 36 (1964) *Goldblatt v. Hempstead,* 369 U.S. 590 (1962).

[119] See Krasnowiecki and Strong, "Comprehensive Regulations for Open Space: A Means of Controlling Urban Growth," 29 *J.A.I.P.,* 87–89 (1963).

[120] *Allison v. State Land Use Commission,* C.A. No. 1383 Circuit Court of the Third Circuit, Hawaii (Memorandum of trial court decision).

[121] *Corsino v. Grover,* 95 A.L. R. 2d 751 at 759 (Conn. 1961). See also *Franco-Italian Packing Co. v. United States,* 128 F. Supp. 408, 414 (Ct. Cl. 1955); 1 *Nichols on Eminent Domain,* 70 and *Miller v. Schoene,* 276 U.S. 272 (1928) where infested trees were destroyed without compensation to protect neighboring trees.

Part II

ZONING AND PROPERTY ASSESSMENT

INTRODUCTION

Like most states, California has always assessed land for tax purposes at a percentage of its market value.[122] Following World War II, when the population of California began to mushroom at an unparalleled rate, the effect of market value assessment on land use began to manifest itself. As California's flat alluvial valleys were carved up for development, landowners soon discovered that the property taxes based on the market value of their land could easily exceed its ability to generate the income needed to pay them. As one landowner sold out to a subdivider at a price reflecting value for nonagricultural purposes, he set an hypothetical market value for neighboring land. As the land which was sold was developed and appreciated in value, the assessor imputed additional value to neighboring undeveloped land. This increased value was reflected in a higher property tax bill. To pay the tax, the second landowner was frequently forced to sell to a developer, thus perpetuating the fission.

The result of this process was to make the assessment of land an influential factor in the timing and location of development in a county. The assessor became by default the de facto planner of his entire county.[123]

The last decade has seen a series of attempts by the California Legislature to ameliorate this condition. Most of these legislative efforts to preserve open space have been directed to land which has either been restricted as to use by government through the zoning process, or voluntarily restricted to open space uses by the landowner. These programs have attempted to remove the urban increment of value which is reflected in high assessments.[124]

Land which is subject to a use restriction is not comparable in value to similar land which is not restricted. Assuming this, the theory of

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[122] See *Sacramento v. Hickman*, 66 Cal. 2d 1010, 59 Cal. Rptr. 618 (1967); *Hanks v. State Bd. of Equalization*, 229 Cal. App. 2d 427, 40 Cal. Rptr. 478 (1964); *Michels v. Watson*, 229 Cal. App. 2d 404, 40 Cal. Rptr. 464 (1964); and Tideman, "Fractional Assessments—Do Our Courts Sanction Inequality?" 16 *Hastings L. J.* 573 (1965).

[123] See generally: Welch, "Agricultural Zoning and Assessment of Farm Land," 17 *Zoning Digest* 393 (1965); Note, "Taxation Affecting Agricultural Land Use," 50 *Iowa L. Rev.* 600 (1965); Hagman, "Open Space Planning and Property Taxation—Some Suggestions," 1964 *Wis. L. Rev.* 628; Beuscher, ed., *Land Use Controls—Cases and Materials*, 565 (3rd ed., 1964); Weiss, "The Effect of Zoning on Market Value," *Seventh Inst. on Eminent Domain*, 13 (1967); and Ehrman and Flavin, *Taxing California Property* (1967). For discussion of the relationship of tax policy to land-use policy, see Delogu, "The Taxing Power As a Land Use Control Device," 44 *Denver L. J.* 279 (1968); Walker, "Impact of Taxing Practices on Land-Use Problems," 3 *Inst. on Planning and Zoning*, 39 (1962).

[124] The California Legislature has not confined its open space conservation programs exclusively to the tax incentive approach. For example, in 1965 the Legislature enacted the Open Space Maintenance Act, Cal. Gov. Code Secs. 50575–50628. This little-used provision allows any local agency to form a special assessment district to finance an open space program. See Volpert, Creation and Maintenance of Open Spaces in Subdivisions: Another Approach, 12 *U.C.L.A. L. Rev.* 830 (1965), Haar and Hering, "The Determination of Benefits in Land Acquisition," 51 *Calif. L. Rev.* 833, 877 (1963). For problems associated with the special district approach generally, see Willoughby, "The Quiet Alliance," 38 *So. Cal. L. Rev.* 72, (1965); Comment, "The Use of Special Assessment Districts and Independent Special Districts as Aids in Financing Private Land Development," 53 *Calif. L. Rev.* 364 (1965) and Nichols, "Comment: How Not to Contest Special Assessments in California," 17 *Stan. L. Rev.* 247 (1965).

much of the recent California legislation has been that once a restriction is placed on land, the free market will reflect that restriction in the selling price. That is to say that if a buyer knows when he buys a parcel of land he will only be able to farm that land, he will only pay a price which is predicated upon his anticipated income from farming. It follows, therefore, that otherwise comparable land which is not so restricted would bring a higher price.

The Legislature, prior to the approval of Article XXVIII, relied upon this hypothetical succession of events to achieve two things. The first of these objectives was to guarantee that land would be assessed for taxation on the basis of its restricted use. Its second goal was to establish a close correlation between fluctuations in market value attributable to the restriction and changes in the assessment. By indirection, the Legislature attempted to shift the focus of the assessor away from value as reflected in sales of comparable land and toward value as derived from the ability of the land to generate income.

The Legislature did this by refining the definition of "comparable" in such a way that sales prices which are used to set value are only used if the selling land is truly comparable to the valued land. Where there is an insufficient number of sales of truly comparable land to value the subject land, income becomes the only allowable index of value.[125]

This legislation guiding the assessors' use of comparable sales in valuing restricted land and the predicted result in terms of market value impact were fully consistent with the constitutional requirement that land be assessed on the basis of its full cash value. However, general uncertainty concerning the practical effect of any given restriction[126] eventually prompted the Legislature to propose a constitutional amendment in order to empower the Legislature to devise a system of use-value assessment. It was this proposal which led to the passage of Article XXVIII of the Constitution.

Before Article XXVIII assessors were constrained to determine the *effect upon market value* of certain retrictions such as zoning or land use contracts or agreements authorized by the California Land Conservation Act.

Article XXVIII marked a profound departure from previous market oriented procedures. It was not the purpose of Article XXVIII to devise a new method of finding market value. It was the object of Article XXVIII to devise a wholly new standard of assessment. Article XXVIII empowered the Legislature to devise an equitable system for assessing *restricted* open space land. *Under Article XXVIII the assessor's job is no longer that of finding and reflecting market value.*

It is now within the power of the Legislature to a) define eligible "open space lands", b) to specify acceptable methods of restricting

[125] For a discussion of the constitutional difficulties posed by this legislative device, see Williamson and Bowden, *Joint Committee on Open Space Land—Preliminary Report*, March 1969, pp. 41–42.

[126] Pre-Article XXVIII zoning restrictions seldom had an impact upon the market value of the restricted land. The reason for this was that prospective purchasers seldom considered a zoning restriction as being permanent. To the extent that these restrictions were not considered in the market place they were also ignored by the assessor whose job it was to find and reflect market values. As a result these zoning restrictions failed to establish an equation between the assessment and the restricted use.

their use to open space, and c) to devise a formula for assessing restricted open space land which is related to the restricted use.

One task which is before the Legislature now is that of devising use restrictions which justify a legislatively mandated use-value assessment. To understand the problems posed by the proposal to include zoning among those restrictions, it is necessary to review the historical development of California assessment law.

In 1922, at a time when the evolution of modern police power controls was yet embryonic, the California Supreme Court decided *Wild Goose Country Club v. Butte County.*[127] It was there held that:

> In arriving at the value of the land it was proper to take into consideration every use to which it was *naturally adapted* and which would enhance its value in the estimation of persons generally purchasing in the open market. The question is not what its value is for a particular purpose, but its value in view of all the purposes to which it is *naturally adapted.* (emphasis added).[128]

Wild Goose concerned a parcel of land which was owned by a duck hunting club, but also used for grazing cattle. Neighboring land was also used for grazing, but was not as well suited for hunting because it was of a higher elevation and lacked the open water necessary to attract ducks. The hunting club argued that while the topography of their land may attract more ducks than does neighboring land, it does not attract a higher selling price from cattlemen. In its petition to the Board of Equalization, the club alleged "that the only value agriculturally said land has is for grazing".[129] The argument was made that since a buyer would buy the land as grazing land, and since it is in fact used as grazing land, it should be assessed as such. In the view of the hunting club the suitability of the land for hunting purposes should be irrelevant to the issue of valuation.

The court disagreed and held that in valuing land the assessor must consider all possible uses to which it is naturally adapted.

As we have seen, the years following the *Wild Goose* case witnessed a rapid development of governmental land use controls. It is no longer enough to speak solely in terms of *natural* restrictions on the use of land. The gun club's land may be admirably suited for duck hunting, but that would be of little moment if it were zoned residential. Cases like *Wild Goose* failed to anticipate this rapid change in land use law.

Section 402.5

In 1957 the California Legislature added Section 402.5 to the Revenue and Taxation Code. The purpose of the code section was to insure that uses to which land was *legally adapted* were considered on an equal footing with those to which it was *naturally adapted.*

As amended in 1959, the statute said that where land is zoned for exclusively agricultural, airport or recreational purposes, the assessor could only consider factors relative to those legally available uses. The assessor was only mandated to consider the legally available uses to the extent that there was "no reasonable probability" that the land would be rezoned for a use which would increase the value of the land.

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[127] *Wild Goose Country Club v. Butte County,* 60 Cal. App. 339; 212 P. 711 (1922).
[128] *Id.* at 212 P. 711–712.
[129] *Id.* at 212 P. 713.

Standard and Method

At the time 402.5 was adopted, the constitutionally obligatory standard of valuation was "full cash value".[130] "Full cash value," as defined in Section 110 of the Revenue and Taxation Code, "means the amount at which property would be taken in payment of a just debt from a solvent debtor."

Mr. Justice Traynor, writing for the majority in *De Luz Homes v. County of San Diego*[131] paraphrased the definition of full cash value as:

> . . . the price that property would bring to its owner if it were offered for sale on an open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other . . . and might be called the market value of property for use in its present condition.[132]

Kaiser Co. v. Reid[133] had held that the absence of an "actual market" for the property does not mean that it has no value. Mr. Justice Traynor had read the *Kaiser* case to mean that the constitutional standard is the "hypothetical market price"[134] which the property would bring if sold at the time of assessment.

While market value was read as synonymous with full cash value, the court in *De Luz Homes* recognized that the *method* of determining market value was not compelled by the Constitution. The Chief Justice noted that:

> Assessors generally estimate value by analyzing market data on sales of similar property, replacement costs, and income from the property . . . and since no one of these *methods* alone can be used to estimate the value of all property, the assessor, subject to requirements of fairness and uniformity, may exercise his *discretion* in using one or more of them.[135] (emphasis added).

In enacting 402.5, the Legislature was attempting to guide the assessor in the use of that discretion. The reason for steering the assessor away from comparable sales was outlined above. First, properties which otherwise would have been considered comparable by the assessor would not truly be comparable to the valued land when the zoning restriction was considered. Second, if the valued land were assessed without regard to the restriction, the value set would result in a tax disproportionate to the income producing ability of the land. This frequently led to premature development. Those who doubted the constitutionality of such guidance contended that the Legislature had in fact altered the "standard" from "full cash value" to income stream under the guise of directing the assessor away from certain "methods" of assessment.

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[130] Article XI, Section 12, California Constitution, "all property subject to taxation shall be assessed at its full cash value." See also Cal. Rev. and Tax. Code Sec. 401.

[131] *De Luz Homes v. County of San Diego,* 45 Cal. 2d 613; 290 P. 2d 544 (1955).

[132] *Id.* at 290 P. 2d 554. See also *Gilmore Co. v. Los Angeles County,* 186 Cal. App. 2d 471; 9 Cal. Rptr. 67 (1960) in accord.

[133] *Kaiser Co. v. Reid,* 30 Cal. 2d 610; 184 P. 2d 879 (1947).

[134] 290 P. 2d 544 at 555.

[135] IBID.

Constitutionality of Section 402.5

The constitutionality of 402.5 was put in issue almost immediately by the State Board of Equalization. In Opinion No. 57-119, November 19, 1957, the Attorney General headnoted his analysis thus: "Section 402.5 is a restatement of an established valuation standard and makes no change in pre-existing law." [136]

The Attorney General read the *De Luz Homes* and *Wild Goose Country Club* cases as holding that:

> The standard of valuation applicable to real property for ad valorem tax purposes . . . necessarily includes a value based on the highest and best use of the property.[137]

No distinction was made between the constitutionally obligatory "standard" and the "method" of deriving that standard. The Attorney General concluded that:

> It would seem evident that the highest and best use of property zoned exclusively for agricultural or recreational purposes, as to which there is no reasonable probability of the removal or modification of the zoning restriction within the near future could only be agricultural or recreational use.[138]

By equating "highest and best use" with restricted use, the Attorney General succeeded in avoiding the critical issue. The critical question is not whether 402.5 laid down a method of assessment which would have been "properly applicable even in the absence of statute". The question to which the answer was needed is whether in the absence of sales, the assessor may be compelled to consider only those uses legally available. If the assessor may be so compelled, are not the owners of zoned land assessed by a more favorable method than others similarly situated? Nevertheless, the Attorney General concluded that:

> We do not reach the question as to whether a statute which purports to establish a restricted standard for limited types of real property is constitutionally defective.[139]

The Attorney General's sanction did not remove all of the obstacles which were strewn in the path of 402.5. The principal road block in the way of fulfilling the legislative purpose behind 402.5 was, in a word, permanence. If the zoning was not permanent, the system broke down.

For the assessor to decide whether a "reasonable probability" existed that the zone would not be changed, he had to look at the history of zoning in his jurisdiction. This is not the time for a detailed discussion of the permanency problem. That issue will be reserved for the following chapter. It is enough now to say that a look at the past quarter century of zoning practice across the State yielded no masterpiece of uniformity. Some zones tended to remain stable, others were wholly transitory.

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[136] 30 Ops. Atty. Gen. 246.
[137] IBID.
[138] 30 Ops. Atty. Gen. 246 at 247.
[139] IBID.

The primary weakness of 402.5 was that in equalization proceedings, the landowner was forced to bear the burden of proving the permanence of the zone. In effect, he had to prove that the zone would not be removed in the foreseeable future.

In 1965 the Legislature amended Section 402.5 to rectify this problem. The amendment established a "rebuttable presumption" that the zoning restriction would not be removed in the foreseeable future. After the presumption was established, the burden was on the assessor to prove that rezoning was likely within the foreseeable future.

Unfortunately, the goal of relating assessments to legally available uses was not reached even by the inclusion of the presumption. Obdurate assessors continued to take the attitude that zoning restrictions "had to prove themselves." The Legislature had mandated the assessor to presume that the zone would be permanent. He was not, however, required to assume that the zone, even though presumed permanent, would have an effect on the market value of the subject land. Assessors generally assumed that any police power restriction would have no effect on market value until sufficient sales had occurred to prove him wrong. The reasons for this assumption will be discussed in the following section.

Constitutionality of Presumption

Within a year of its inclusion, the constitutionality of the presumption was put in issue. The Attorney General decided that:

> Section 402.5 . . . as amended by the 1965 Legislation, requires that the assessor observe a rebuttable presumption that there will not be a removal or modification of the zoning restriction on the property in the near future and that during such time he shall consider no use factors other than agricultural use. This is clearly a change in the law and is opposed to the usual presumption that the assessor has regularly performed his duty in finding values and entering assessments on the roll. See Code Civ. Proc. Sec. 1963 (IS). The Legislature, however, may make procedural changes in the law, and the changing of the burden of proof is clearly procedural. Now, rather than the taxpayer being required to prove that the zoning restriction is not likely to change, the burden of showing that a change is reasonably probable is on the assessor.[140]

The Attorney General's opinion did not construe the section as amended to deviate from the constitutionally compelled "full cash value" standard discussed above. Indeed, this opinion, like its forerunner, did not address itself to the distinction between the standard of assessment and the method used in deriving the assessed value. The question of whether Section 402.5 so drastically altered "methods" of assessment that it changed the mandatory "standard" remained untested.

Section 402.1. Revenue and Taxation Code

Section 402.5 was repealed in 1966 and replaced by 402.1. These two code sections were similar in many ways. The difference between the two sections is primarily one of scope. 402.1 bound the assessor

[140] 47 Ops. Atty. Gen. 171 at 179.

to "consider the effect upon value of *any* enforceable restrictions to which the use of the land may be subjected". It was not tied to agricultural or recreational land. It said instead that "restrictions shall include but are not necessarily limited to zoning restrictions limiting the use of the land . . .". Section 402.1 directed the assessor to consider any legal restriction on the use of land, regardless of what that restriction or use might be.

Section 402.1 incorporated the rebuttable presumption of permanence from 402.5 and spelled out the grounds for rebuttal. Among the grounds specifically available to the assessor for rebutting the presumption are (1) "past history of like use restrictions in the jurisdiction in question," and (2) "the similarity of sales prices for restricted and unrestricted land."

Where the presumption of permanence stands unrebutted, the assessor is foreclosed from considering sales of land not similarly restricted as comparable in assessing restricted land.

As may have been inferred from the second paragraph of this discussion, 402.1 really created two rebuttable presumptions. The first is that the restriction is permanent. To overcome this presumption, the assessor must show that a pattern of rezoning has characterized the area or that historically, similar zoning restrictions have been frequently avoided or circumvented. The second presumption is that the restriction will have the effect of equating the value of the property to the value attributable to the legally permissible use. Failure of this equation will be demonstrated by "the similarity of sales prices for restricted and unrestricted land."

Conclusion

The Constitution requires that all property be assessed at its "full cash value." Full cash value was long ago equated with market value. All of the legislation thus far examined concerned the method by which that value was found. *Wild Goose Country Club v. Butte County,* in 1922, said that in valuing land the assessor must consider all possible uses to which it was naturally adapted. *Kaiser Co. v. Reid*, handed down in 1947, said that in the absence of an "actual market" for the valued land, the assessor must devise an "hypothetical market price" for the land.

Beginning in the late 50's, the Legislature began to direct the assessor, when considering uses to which the land is *naturally adapted*, to confine himself to those uses to which it is also *legally adapted.* Assessors argued that if the free market fails to reflect the significance of a zoning restriction, then it is not sufficiently significant to warrant use-based assessment. The assessors argued further that if the landowner could avoid the zoning ordinance, then the use restrictions spelled out in the zoning ordinance are in fact illusory and should not be considered as permanently imposed. Landowners argued that there was no reason why they should support strong zoning, since the assessor would simply ignore the zone in making his assessment. Landowners argued further that since the assessor would in any case take a "wait and see" attitude, it would take many years for the significance of the zone to be reflected in lower sales prices.

The effect of this was to eliminate zoning as a restriction warranting use-related assessment. Market value as indicated by sales prices of zoned and unzoned property remained the final arbiter of valuation despite legislative efforts to minimize its effect.

Part III

THE ZONING APPARATUS AND ITS ADMINISTRATION

The motive for limiting property rights is not the desire to deprive anyone of that which is rightfully his. We begin with the assumption that we are more than one living on this mountain.[141]

INTRODUCTION

Zoning is based on the utilitarian notion that by restricting the rights of all property owners, each will benefit. Each landowner relinquishes some property right for the good of the social whole. The only compensation given to the landowner is a pro rata benefit in the form of nuisance protection, reciprocal control over neighboring land uses and property value stabilization.

The public attitude toward zoning may be described in the way Winston Churchill described representative democracy: "It is the worst system ever devised by the wit of man except for all the others." Viewed in this light, zoning does enjoy wide public support. If the pattern of history serves as a guide for the future, police power regulation will play an increasingly important role in coming decades. Professor Powell, dean of American property law scholars, has pointed out that:

> . . . the history of the law of private ownership has witnessed simultaneously a play-down of absolute rights and a playing-up of social concern as to the use of property . . . Property rights have been redefined in response to a swelling demand that ownership be responsible and responsive to the needs of the social whole. Property rights cannot be used as a shibboleth to cloak conduct which adversely affects the health, the safety, the morals, or the welfare of others.[142]

Judicial authority for Professor Powell's position is not difficult to find. One court put it thus:

> In the fight for better living conditions in large cities, in the contest for more light and air, more health and comfort—the scales are not well balanced if dividends to the individuals outweigh health and happiness to the community.[143]

The question is not whether we will have governmental regulation of land use but rather what form that regulation should take. The remainder of this paper will be devoted to that question.

In discussing the attributes of an adequate land use regulation program for purposes of Article XXVIII, a number of distinct questions must be isolated. The first of these questions is whether the present structure of police power regulations is adequate to warrant use related assessment. The second is whether a form of police power regu-

[141] Eivinid Berggrav, "Staten og Mennesket," in *Land og Kirke,* 222–24 (1945). As quoted in Fred L. Mann, "Trends in the Use of Public Controls Affecting Agricultural Land Ownership in Europe and Great Britain," 50 *Iowa L. Rev.* 458 (1965).

[142] Powell, "The Relationship Between Property Rights and Civil Rights." 15 *Hastings L. J.* 135 at p. 149 (1963).

[143] *Welton v. 40 East Oak Street Building Corp.* 70 F 2d 377 at 383 (1934).

lation can be devised which would justify use related property assessment of open space land.

This chapter will be devoted primarily to an investigation of the zoning apparatus as it now exists in California. The purpose of this investigation is to determine whether this zoning system is adequate to justify use related assessment under Article XXVIII. For decades assessors and others have pilloried traditional zoning. The following pages will seek to determine whether this deprecatory criticism has been justified.

The Mechanics of Zoning

One authorization for the adoption of zoning ordinances in California is found in the Government Code at Sections 65800 and 65850. The delegation is broad. The Legislature at one point declares its intention to "provide only a minimum of limitation in order that counties and cities may exercise the maximum degree of control over local zoning matters." [144]

Section 65900 allows the "legislative body of a city or county" to "create . . . either a board of zoning adjustment, or the office of zoning administrator or both." It is the duty of this body to administer the zoning program.[145] The legislative body may also appoint a board of appeals [146] whose job it is to "hear and determine appeals from the decisions of the board of zoning adjustment or the zoning administrator." [147] Where no appellate board has been created, the power to review these administrative findings and decisions rests with the local legislative body.[148]

Pursuant to Section 65300 of the Government Code, each city [149] and county is obliged to "adopt a comprehensive, long-term general plan for the physical development of the county or city." The plan must contain, among other things, a "land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, agriculture,[150] recreation, education, public buildings and grounds, (etc.)." [151]

To implement the general plan, the legislative body may adopt a scheme of "specific plans." [152] These specific plans may include "regulations of the use of land and buildings, the height and bulk of buildings, and open spaces about buildings." [153]

The general plan is also implemented by the adoption of zoning ordinances. No city or county, however, is required to adopt a general

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[144] Cal. Govt. Code Sec. 65800.

[145] Cal. Govt. Code Sec. 65901, "The board of zoning adjustment or zoning administrator shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining such matters, and applications for variances from the terms of the zoning ordinance." Section 65902 provides that where there is no such body, these duties shall reside in the planning commission.

[146] Cal. Govt. Code Sec. 65900.

[147] Cal. Govt. Code Sec. 65903.

[148] Cal. Govt. Code Sec. 65904.

[149] But see Govt. Code Sec. 65700, which exempts charter cities from coverage of planning provisions unless adopted by charter amendment or ordinance.

[150] Beginning Nov. 1, 1968, the general plan must designate the proposed distribution, location and extent of use of land for "natural resources" in addition to agriculture. See Stats. 1967, Ch. 1657, Sec. 1. By July 1, 1969, each general plan must include a housing element. Cal. Govt. Code 65302(c). Amended by Stats. 1967, Ch. 1658, Sec. 4.

[151] Cal. Govt. Code Sec. 65302(a).

[152] Cal. Govt. Code Sec. 65450.

[153] Cal. Govt. Code Sec. 65451 (b), (e).

plan prior to the adoption of a zoning ordinance.[154] In theory, planning precedes zoning, whether a formal plan is adopted or not. The zoning ordinance is intended to further the general plan, when one exists, or embody a plan where no other plan has been developed.[155]

It is in the administration of the ordinance that the most crucial test of these principles is encountered. It is at this stage that two competing interests come together. These public concerns involve the need for flexibility and the need for objective standards in zoning administration. As one writer put it, zoning restrictions must:

> . . . afford sufficient flexibility and responsiveness to community needs to deal constructively with vicissitudinous situations, yet (be) . . . administered pursuant to the rule of law, not unconfined discretion.[156]

Eminent authorities in the field of land use planning doubt that the administrative process is achieving these objectives.[157] In the words of Walter Blucher:

> The question must be asked seriously whether zoning, as it is currently being practiced, is endangering our democratic institutions. A second question stemming from the first is: 'Is zoning increasingly becoming the rule of man rather than the rule of law?' I would be inclined to answer both questions affirmatively.[158]

Zoning Flexibility

The most common devices used to achieve flexibility in zoning administration are the special use permit and the variance.[159] It is the record of these tools which furnishes the basis of much concern by zoning experts. These two devices are fundamentally dissimilar. A special use permit may be granted if the use contemplated is compatible with other uses in the zone. It is usually conditional and need not be given in order to preserve the constitutional rights of the landowner. In contrast, a variance may be granted to permit a use which is incompatible with other permitted uses in the zone. Indeed, a variance may permit a use which has been specifically disapproved by the ordinance.

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[154] Cal. Govt. Code Sec. 65860.

[155] See note 39 *supra*.

[156] Sullivan, "Flexibility and the Rule of Law in American Zoning Administration," in *Law and Land*, 129 (Harr ed. 1964).

[157] For studies substantiating this concern see Note, "Zoning: Variance Administration in Alameda County," 50 *Cal. L. Rev.* 101 (1962), Gaylord, "Zoning: Variances, Exceptions and Conditional Use Permits in California," 5 *U.C.L.A. L. Rev.* 179 (1958). Bryden, "Zoning: Rigid, Flexible, Or Fluid?" 44 *Journal of Urban Law* 287 (1967), Dukeminier and Stapleton, "The Zoning Board of Adjustment: A Case Study in Misrule," 50 *Ken. L. J.* 273 (1962), Babcock, "The Unhappy State of Zoning Administration in Illinois," 26 *U. Chi. L. Rev.* 509. (1959), and Reps, "Discretionary Powers of the Board of Zoning Appeals," 20 *Law and Contemp. Prob.* 280 (1955).

[158] Blucher, "Is Zoning Wagging the Dog?", *Planning* 96 (1955).

[159] Not all authorities agree that the variance was intended to achieve flexibility in administration. For example, in the study by Dukeminier and Stapleton it is argued that: "The board was not instituted to achieve flexibility. Variances were not to be granted merely because the proposed use did not involve a substantial departure from the comprehensive plan nor injuriously affect the adjoining land. Unnecessary hardship, not insubstantial harm, is theoretically the touchstone of the board's jurisdiction." 50 *Ken. L. J.* 273 at 321–22. The authors concede, however, that "planning flexibility could, and did, come in by this back door method. Indeed, today it is the most frequently used (or, more accurately, misused) method of administering flexible controls." 50 *Ken. L. J.* at 341.

Tustin Heights Association v. Board of Supervisors[160] has been cited by a leading practitioner as a case "which . . . stresses the distinction that a variance is not a matter of right, but is a special privilege with the burden of proof being upon the applicant while the use permit is contemplated by the ordinance, and thus constitutes a 'permitted' use —subject to reasonable review and the attaching of appropriate conditions." [161]

Special use permits are available for such things as governmental facilities, hospitals, sports arenas and other uses which need not be segregated into any one zone. These uses are normally part of the zoning ordinance but are not included among the zone classifications.[162]

For purposes of Article XXVIII the variance, or exception as it is interchangeably known in California, is the more significant of these devices. While the word variance is used in zoning parlance to denote either a bulk or a use variance,[163] it will hereafter refer only to a use variance.

It is relatively unusual for open or undeveloped land to change to a more intensive urban use through the use of a variance. Most of the variance cases which we will examine presently concern urban land uses. However, the variance remains important to the analysis of zoning for open space. The weakness in zoning administration which appears in an urban context can be expected to appear in a rural context if the police power is used to control rural land to the extent that urban land is presently regulated.

To the extent that the variance now presents a weakness, it is a weakness which is not limited only to zoning in urban areas. It is, in fact, a weakness in the very fabric of zoning as an institution. The fact that this weakness is most apparent in urban zoning may imply only that the permanence of rural zoning is more easily challenged legislatively than through the administrative process. It may also imply that land ownership, and hence land use, changes more frequently in the case of urban land than in rural land. It is clear, however, that if rural zoning is to be used prospectively as a tool of open space preservation, its strengths and weaknesses must be explored. It would seem imprudent to assume that the difficulties which have been associated with urban zoning will not affect rural zoning as the pressures for more intensive use of rural land develop. The inherent attributes of zoning are not diminished by geography.

Purpose of Variance

It is generally accepted that the purpose of the variance is to insulate the zoning ordinance from constitutional attack. Were it not for some safety valve such as the variance, the restrictions of the ordinance

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[160] *Tustin Heights Association v. Board of Supervisors,* 170 Cal. App. 2d 619, 339 P. 2d 914 (1959).

[161] Charles R. Martain, *New Alternatives to the Zone Variance,* 1968 Annual Conference, League of California Cities, Oct. 14, 1968, p. 4. (mimeo.)

[162] Special use permits have been upheld in California. See *Gonsalves v. City of Dairy Valley,* 265 ACA 446 (1968) and *Essick v. Los Angeles,* 34 Cal. 2d 614. For limitation on its use, see *People v. Perez,* 214 CA 2d 881; and Green, Are "Special Use" Procedures in Trouble? 12 *Zoning Digest,* 73 (1960).

[163] Dukeminier and Stapleton, "The Zoning Board of Adjustment: A Case Study in Misrule," *50 Ken. L.J.* 273 (1962) at 281, "A use variance allows a structure or use in a district restricted against such structure or use. A bulk variance gives the property owner relief from some ordinance requirement with respect to area, height, setback, parking spaces and such."

could operate harshly on particular parcels of property subject to the zoning restriction. If a landowner so affected were to prevail in a suit challenging the ordinance as an uncompensated taking of his property without due process of law, the entire ordinance could be struck down. One writer has said that:

> The variance procedure was intended to provide a safety valve in cases where the hardship to an individual landowner was so great as to invite litigation as to the validity of the applicable zoning regulation, and where, in the event of litigation, the zoning regulations were likely to be held invalid as applied to the land in question.[164]

It has been correctly said that the granting of a variance presupposes the reasonableness of the zoning classification as a whole.[165] The variance is granted to relieve a hardship which is unique to the petitioner's property.[166] If the hardship is shared by other property in the zone, such a condition could furnish a basis for rezoning or an attack on the ordinance itself. It does not furnish grounds for the grant of a variance.

Legal Grounds for Variance

It is difficult to draft a comprehensive zoning ordinance which operates fairly upon each parcel within its boundaries.[167] It is for that reason that Section 65906 was added to the California Government Code in 1965 to provide that:

> Variances from the terms of the zoning ordinance shall be granted only when, because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification.

The procedure followed in considering requests for variance is governed by administrative and not legislative standards.[168] Traditionally California courts have been most reluctant to review a decision by the administrative body denying the request for a variance[169] except for procedural error. In addition, the scope of judicial review of variances actually granted is unsettled.[170]

However, this reluctance on the part of California courts to go behind an administrative decision has been the subject of far-reaching change in the past several years.

Prior to 1966, California courts presumed that when a variance was granted, the administrative body had done so on the basis of appropriate

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[164] Cunningham, "Land Use Control—The State and Local Programs," 50 *Iowa L. Rev.* 367 at 394 (1965). See also *Lindell Co. v. Board of Permit Appeals,* 23 Cal. 2d 303; 144 P. 2d 4 (1943). Comment, "General Welfare, Welfare Economics, and Zoning Variances," 38 *So. Cal. L. Rev.* 548 (1965).

[165] Comment, "Zoning: Variance Administration in Alameda County," 50 *Cal. L. Rev.* 101 at 103–104 (1962).

[166] *Minney v. City of Azusa,* 164 Cal. App. 2d, 12,330 P. 2d 555. Appeal dismissed, 359 U.S. 436 (1958).

[167] For an enlightened view of the legitimate purpose of the variance see *Hamilton v. Board of Supervisors* (1969) 269 Cal. App. 2d, 75 Cal. Rptr. 106, 269 A.C.A. 59 at 61, footnote 2.

[168] *Johnston v. Board of Supervisors,* 31 Cal. 2d 66, 73; 187 P. 2d 686, 690 (1947).

[169] *Haddin, Inc. v. City of Inglewood,* 101 Cal. App. 2d 47, 48; 224 P. 2d 913, 914 (1950). *Rubin v. Board of Directors,* 16 Cal. 2d 119, 126; 104 P. 2d 1041, 1044 (1940).

[170] Gaylord, "Zoning: Variances, Exceptions and Conditional Use Permits in California," 5 *U.C.L.A. L. Rev.* 179 at 182 (1958).

findings and substantial evidence.[171] This presumption of adequacy has been rejected in a series of cases beginning with *Cow Hollow v. Board of Permit Appeals.*[172] In that case the court tediously pored over the record to determine whether the variance requirements set down in the San Francisco City Charter and Planning Code had been met. The requirements for the grant of a variance under the city code are similar to those called for by California Government Code Sec. 65906. But it is interesting that the court nowhere mentioned the state statute.[173]

The court found no evidence to substantiate the requirements "that there are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use of the property, that do not apply generally to other property or uses in the same class or district, that the literal enforcement . . . would result in . . . unnecessary hardship . . ." or that "the variance is necessary for the preservation of a substantial property right of the petitioner possessed by other property in the same . . . district." [174]

The court concluded that to allow administrative decisions of this sort to go unexamined "would do violence to the meaning and purport of the comprehensive zoning code and could result in a gradual whittling away of its objective . . . Here again," said the court, "we would have an amendment to the zoning code in the guise of a variance." [175]

The scope of appellate review in cases which challenge the grant of a variance may have been further clarified by *Broadway Laguna Assn. v. Board of Permit Appeals.* [176] In that case Mr. Justice Tobriner distinguished the *Cow Hollow* and *Broadway* cases from the *Siller* [177] case on the basis of the language found in the respective ordinances. The San Francicso Charter and Code which governed both the *Cow Hollow*

[171] *Siller v. Board of Supervisors,* 58 Cal. 2d 479, 25 Cal. Rptr. 73 (1962). *Flagstad v. San Mateo,* 165 Cal. App. 2d 138, 318 P. 2d 825 (1957). *Bradbeer v. England,* 104 Cal. App. 2d 704, 232 P. 2d 308 (1951).

[172] *Cow Hollow Improvement Club v. Board of Permit Appeals,* 244 Cal. App. 2d 160; 53 Cal. Rptr. 610 (1966).

[173] There are two reasons why the court was not compelled to recognize the state statute. 1. Cal. Govt. Code Sec. 65803 provides that the requirements contained in Cal. Govt. Code Sec. 65906 do not apply to chartered cities. The city and county of San Francisco is both a chartered city and a chartered county. 2. Cal. Const. Art. XI, Secs. 6 and 8, gives chartered cities exclusive legislative authority "in respect to municipal affairs." Zoning has been held to be a "municipal affair." *Brougher v. Board of Public Works,* 205 Cal. 426, 271 P. 487 (1928); *Fletcher v. Porter,* 203 Cal. App. 2d 313, 21 Cal. Rptr. 452 (1962); *Redwood City v. Moore,* 231 Cal. App. 2d 563, 42 Cal. Rptr. 72, *Grass Valley v. Walkinshaw,* 34 Cal. 2d 595, 212 P. 2d 894 (1949); Comment, "Legislative Control of Municipal Corporations in California," 7 *U.C.L.A. L. Rev.* 102 (1960). See 36 Ops. Cal. Atty. Gen. 95 (1960) for discussion of state control of zoning by charter cities. Since San Francisco is a chartered city, it is doubly insulated from the state statute. Unless the Legislature makes zoning a matter of statewide concern thereby preempting the field, the state statute will only be tested in a case involving a county or a general law city. For a view contrary to this analysis, see Hagman, *California Zoning Practice,* (Cal. CEB) Sec. 7.17, p. 262, where the author submits that "Because California communities granted variances long before there was any provision for them in the statutes, the power to grant them may not be confined to what the statute permits."

[174] *Cow Hollow v. Board* 245 Cal. App. 2d 160 at 175, 176, 179 and 180.

[175] *Id.* at 181. Justice Sims dissented, contending that the facts could be interpreted differently but that the "amphibological phraseology" used by the Board make interpretation difficult. He did not disagree with the court's decision to scrutinize the record.

[176] *Broadway Laguna Assn. v. Board of Permit Appeals,* 66 Cal. 2d 767, 59 Cal. Rptr. 146, 427 P. 2d 810 (1967).

[177] *Siller v. Board of Supervisors,* note 171 *supra.*

and the *Broadway* cases required "the administrative board to specify its subsidiary findings and its ultimate conclusions." [178]

It was the view of six members of the Supreme Court that:

> The variance sought by the developer in this case would confer not parity but privilege; to sanction such special treatment would seriously undermine present efforts to combat urban blight and municipal congestion through comprehensive zoning codes. So selective an application of the provisions of the City Planning Code would destroy the uniformity of the zoning laws which is their essence.[179]

It remains to be seen whether California courts will limit their review to cases like *Cow Hollow* and *Broadway*.

The District Court in *Robinson v. Oakland* [180] limited its investigation to a determination of whether the Oakland Municipal Code had been complied with. As in the previous two cases, it ignored the state statute and found that the variance had been improperly granted under local ordinances.

However, in the recent case of *Hamilton v. Board of Supervisors of Santa Barbara County* [181] the court invoked Section 65906 [182] and struck down an improperly granted variance. After having a variance petition denied by a 7–2 vote of the planning commission, the landowner appealed to the county board of supervisors. The board, sitting as an administrative body, granted the variance. The court found that the state standard for the grant of a variance contained in Section 65906 was "concededly controlling." In comparing 65906 with the record, the board's elliptical findings did not appear to the court to sustain the board's order.

In both *Moss v. Board of Zoning Adjustment* and *Tush v. Board of Supervisors,* which dealt with the Los Angeles Charter and a Ventura ordinance, respectively, the court refused to read either *Cow Hollow* or *Broadway* as establishing new statewide rules for the review of variance cases.[183]

No California case has yet extended the rationale of the cases beginning with *Cow Hollow* to cities which lack the requirement that variances be granted only upon specific findings based upon relevant evidence. It would appear, however, that these cases represent a positive trend. The courts seem to be increasingly willing to look behind an

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[178] *Broadway v. Board,* 66 Cal. App. 2d 767 at 773. No such requirement was contained in the ordinances or charters which governed the court in previous cases such as *Siller.* The court found that "the basic difficulty with the board's findings in the instant case is not that they lack evidentiary support but rather that they lack legal relevance; even if they are assumed to be correct, those findings simply do not meet the requirements of the planning code."

[179] *Id.* at 781.

[180] *Robinson v. City of Oakland,* 268 A.C.A. 285; 268 Cal. App. 2d, 74 Cal. Rptr. 17 (1968).

[181] *Hamilton v. Board of Supervisors* (1969) 269 Cal. App. 2d, 75 Cal. Rptr. 106 269 A.C.A. 59.

[182] Cal. Govt. Code Sec. 65906.

[183] *Moss v. Board of Zoning Adjustment,* 262 Cal. App. 2d 68 Cal. Rptr. 320, 262 A.C.A. 1 (1968). The court quotes board member holding forth on the propriety of variances generally in these words, "I think people can talk a lot about paying taxes and how come the economy isn't moving, but if you have vacant land and people with reasonable uses, . . . I think that the most persuasive argument with me (for a variance) is the highest and best use of the land." 262 Cal. App. 2d 1 at 4. The board considered this reasoning inadequate to justify a variance. *Tush v. Board of Supervisors,* 262 Cal. App. 2d, 68 Cal. Rptr. 505, 262 A.C.A. 284 (1968).

administrative grant or denial of a variance in response to mounting criticism of administrative abuse of discretion.

This trend should not go unnoticed by the Legislature in considering an extension of police power regulation to open space land. It is, for example, possible to mandate *statewide* compliance with the requirements of Cal. Govt. Code Sec. 65906 through preemption. If the Legislature determines that the goal of open space conservation is a matter of statewide concern, then the program of land-use regulation would no longer be a municipal affair and charter cities and counties would be bound by state standards.

Owing to the paucity of reported cases reviewing the grant of a variance under Cal. Govt. Code Sec. 65906, it is difficult to predict the effect which preemption would have. But since the legally sufficient grounds for the grant of a variance in other jurisdictions has been rather clearly settled, and since California's legislation is not atypical, the effect of preemption would probably be to impose the following conditions upon the grant of a variance: [184]

1. Because of the "size, shape, topography, location or surroundings",[185] the land is not economically productive in any use allowed by the ordinance. "The fact that the owner could make a greater profit by using the land in a nonconforming way is, by itself, no ground for a variance . . . The question is whether the property can be put to *any* conforming use with a fair and reasonable return, not whether the ordinance precludes its most profitable use." [186]
2. The hardship must not be self-created.

   One cannot by one's own actions sell parcels out of a lot and then finding he has room enough only for a hot dog stand insist on using the property for that purpose.[187]
3. The hardship must not be shared by other property in the zone. It must be unique to the petitioner's land.

   The practical difficulty or undue hardship relied upon as a ground for a variance must be unusual or peculiar to the property involved and must be different from that suffered throughout the zone or neighborhood.[188]
4. The hardship must not be so recurrent throughout the area that it is capable of being rectified by an amendment of the ordinance.[189]

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[184] See Dukeminier and Stapleton, *op. cit.*, note 163, pp. 279–280. See also Bryden "Zoning: Rigid, Flexible, or Fluid?" 44 *Journal of Urban Law* 287 at 304–306. See also Hagman (Cal. CEB) *California Zoning Practice,* Secs. 7.15 and 7.16.

[185] Cal. Govt. Code Sec. 65906.

[186] Dukeminier and Stapleton, *op. cit.* note 163 at p. 279. See also *Broadway Laguna Assn. v. Board of Permit Appeals* 66 Cal. App. 2d 767 at 775 (1967) and *County of San Diego v. McClurken*, 37 Cal. 2d 683 at 690, 234 P. 2d 972 (1951).

[187] *Beloin v. Blankenhorn*, Superior Court, County of Los Angeles, No. 560, 288 (1951) as quoted in Gaylord, *op. cit.* note 170 at 192.

[188] *Brown v. Beuc,* 384 S.W. 2d 845, 852 (Mo. Ct. App. 1964). See Bryden *op. cit.* note 201 p. 306.

[189] *English v. Zoning Board of Adjustment,* 395 Pa. 118, 122; 148 A. 2d 912, 914 (Pa. Sup. Ct. 1959), *Young Women's Hebrew Ass'n v. Board of Standards and Appeals,* 266 N.Y. 220, 275–76, 194 N.E. 751, 753 (1935).

5. The variance will not alter the character of the neighborhood nor conflict with some public interest in safety, etc.[190]

Zoning Administration

The violations of zoning are to be found at every level of the administrative and legislative process. I have said that in my opinion 50 percent of all the rulings of zoning boards of appeals in the United States are probably illegal usurpations of power.[191]

In the past decade much has been written about the sad state of zoning administration in the United States.[192] California has not escaped this scrutiny. A study of zoning administration in Alameda County in 1962 disclosed that "Although 284 variances were granted during the year, in only fifteen cases does the record appear to contain substantive evidence of special circumstances and hardship sufficient to warrant a variance . . . While 284 variances were granted as a result of the applications submitted during the year, only 48 were denied." [193] The five criteria set out above were almost entirely ignored in the administrative process.

It has been pointed out that: "The fundamental question is whether or not the Board acted on each petition in accordance with law, and without substantial injury to the neighborhood and community values, not whether it granted 'too many' or 'too few' petitions." [194] The record of California is, like most states, a chronicle of failure. The case of *Beloin v. Blankenhorn* [195] has been used to illustrate the pattern of malfeasance which has characterized zoning administration in California.[196] The petitioner had based his variance request on the ground that "there are only two gasoline service stations in the locality and those (are) on the 'wrong side of the street' . . . for the general public travelling west." In addition, the petitioner argued that any use au-

[190] *Fletcher v. Board of Supervisors,* Los Angeles Superior Court No. 668, 954 (1956). See Gaylord, *op. cit.* note 170 p. 184. See also "Government Control of Land: Protecting the I-know-it-when-I-see-it Interest," 62 *N.W. L. Rev.* 439 where at 440 the author notes that "In order to obtain a variance, an applicant must show particular hardship in the applicaion of the zoning ordinance to him. This has generally been taken to mean that the applicant must satisfy four conditions: he must show that (1) strict enforcement of the ordinance would impose an unreasonable restraint on the use of his property; (2) the hardship would be due to unique circumstances affecting his property; (3) the hardship would not be self-inflicted; and (4) the variation would not disrupt the comprehensive plan by changing the character of the zone or adversely affecting present or future uses of adjacent property."

[191] Blucher *op. cit.* note 114 at 100. See also Maltbie, "The Legal Background of Zoning," 22 Conn. B.J. 2 (1948).

[192] Babcock, "The Unhappy State of Zoning Administration in Illinois," 26 *U. Chi. L. Rev.* 509 (1959); Dallstream and Hunt, "Variations, Exceptions and Special Uses," 1954 *U. Ill. L.F.* 213; Comment "Judicial Control over Zoning Boards of Appeal: Suggestions for Reform," 12 *U.C.L.A. L. Rev.* 937 (1965); Leary, *A Model Procedure for the Administration of Zoning Regulations,* (1958); Raps, "Discretionary Powers of the Board of Zoning Appeals," 20 *Law and Contemp. Prob.* 280 (1955); Note, 74 *Harv. L. Rev.* 1396 (1961); "Zoning Amendments and Variations, and Neighborhood Decline In Illinois," 48 *N.W. L. Rev.* 470 (1953); Fox, "The Unreasonable Concept of Reasonableness in Zoning Disputes," 41 *Chi. B. Rec.* 77 (1959); R. L. Wexler, "Zoning Ordinance is no better than its administration: a Platitude Proved," *I John Marshall J.* 74 (1967); Fonoroff, "Problems in Zoning Administration," 33 *Ohio Bar* 763 (1960); Green, "Rough Justice: Baby or Bath Water?" 13 *Zoning Digest* 161 (1961); Pomeroy, "What To Do About the Board of Appeals," 12 *Zoning Digest* 289 (1960); Souter, "Zoning Appeals: How A Board of Zoning Appeals Functions," 40 *Mich. S.B.V.* 26 (1961); Richard Babcock, *The Zoning Game* (1966).

[193] Comment "Zoning: Variance Administration in Alameda County," 50 *Cal. L. Rev.* 101 at 107 (1962).

[194] Dukeminier and Stapleton, *op. cit.* note 163, p. 320.

[195] *Beloin v. Blankenhorn,* Superior County, County of Los Angeles, No. 560, 288 (1951).

[196] The discussion of the *Beloin* case has been taken from Gaylord, *op. cit.,* note 170, p. 188, 189 and 196.

thorized by the zoning ordinance would require additional capital which the petitioner neither had nor could obtain. In a rare and unreported opinion, Judge Hanson observed that ". . . if the defendant cannot procure the necessary mortgage money for that purpose (a use permitted) it is not of the slightest concern to the citizens of Los Angeles or the Board of Zoning Appeals."

Understanding the Board

> You cannot watch zoning activities around the country for long without concluding that all zoning changes are now done by pressure . . . Probably the weakest link in the zoning chain is the board of appeals. The board must be educated to its responsibilities and its powers. It must not be allowed to usurp legislative authority, which it is prone to do. [202]

Understanding the way in which zoning administrators perceive their role is of paramount importance in trying to understand the way in which they in fact do function. It should be understood at the outset that those who make zoning decisions are normally those who stand to profit from their decisions. They are drawn from the business community and are frequently involved in matters which they must decide. [203] The Dukeminier and Stapleton study found the board to comprise an attorney, an architect, a realtor and two businessmen. [204] The authors found that "Experienced builders and realtors seemed almost invariably to succeed in their petitions. A high degree of success was also obtained by established businesses." [205] The unusual record of success among these two groups was not apparently due to better preparation, advocacy or compliance with judicial requirements. The authors hypothesize instead that it is "attributable to the fact that the Board members have identifications with, and perspectives of, the same business and social groups with which these particular applicants identify.[206] The board members are, or provide professional services for, businessmen." [207]

One commentator has suggested that zoning administrators "see their function as a broker for the individual citizen against the inevitable comprehensiveness of the law." [208] Another has suggested that they see their role as the dispenser of "rough justice", reflecting the "conscience of the community—a close approximation of what most people in the community would think the proper course of action." [209] It has also been posited that "Perhaps the very function of the board

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[202] O'Harrow, "Trends in Planning," *Public Management*, Nov. 1955, pp. 253–54.

[203] One of many zoning analysts has suggested that "It seems to be an inescapable conclusion that, as matters now stand, the zoning law, far from accomplishing its purpose to protect the property rights of others, has become merely an instrument of special favor, under which those with power or influence can either by special permission or by change of zoning, accomplish their own selfish purposes regardless of the over all public good." John A. McCarthy, "Zoning and the Property Rights of Others," 48 *Mass. L. Q.* 473, 499–500 (1963).

[204] Dukeminier and Stapleton, *op. cit.* note 163, p. 274 footnote 5.

[205] *Id.* at 325.

[206] Compare Horack and Nolan, *Land Use Controls* 176–77 (1955): "The temptation of the members of such boards (of adjustment), particularly in the community where almost everyone is known to everyone else, is to play the good fellow and substitute for the tests specified in the statute and ordinance the following: (1) Will the variance help the applicant, and (2) are the neighbors complaining?"—Dukeminier and Stapleton, *op. cit.* p. 325.

[207] Dukeminier and Stapleton, *op. cit.* note 163, p. 325.

[208] Frost, "The Trouble with Zoning," 47 *Nat'l Mun. Rev.* 275 at 277 (1958).

[209] Green, "Rough Justice: Baby or Bath Water?" 13 *Zoning Digest* 161, 165 (1961).

makes for a built-in bias—that is, an inherent tendency to justify their existence by drawing on their own unique power to grant variances." [210]

Whatever the reason, the result of all this leger-demain is that "while the courts view the benefit accruing to the landowner as a by-product of the variance's primary function of insulating the ordinance against constitutional attack, the boards tend to ignore the constitutional question and view the benefit to the applicant as a basic purpose of the variance." [211]

More important than what is done and why, is the effect of allowing administrative decisions to be made by unconfined discretion. Zoning administration as it is now practiced in California and elsewhere has the effect of subjecting property rights to the caprice of the current whim of a temporary board member, rather than having them determined by the rule of law. The classic study of Dukeminier and Stapleton is illustrative.

> Between January, 1960 and September, 1960, there were fourteen requests for a sign variance. Three were granted; eleven were denied. In September, 1960, one membership of the Board changed, and so, apparently did the position of the Board respecting sign variances. Between September, 1960, and June, 1961, the Board had twenty-eight requests for a sign variance, including four requests to reverse earlier decisions. (The planning staff recommended granting three and denying twenty-four. It made no recommendation as to one.) Of these twenty-eight requests, twenty-four were granted on first hearing. Only two requests were ultimately denied.[212]

The near total absence of objective legal standards in the administration of zoning stems primarily from the fact that the variance granting body is virtually immune from any review. The Alameda County study [213] saw 322 variance applications heard in one year. Of these 284 or 87% were granted. In only 15 could any legal justification for the variance be found.[214] Not one of these cases was ever reviewed by the court.[215]

Rigidity and the Variance

Like other issues of public policy, zoning and its administration are partly a matter of whose ox is being gored. There are those who argue vociferously if not cogently for a return to laissez faire land use policy. One such advocate has written sarcastically that:

[210] Comment, "Judicial Control over Zoning Boards of Appeal: Suggestions for Reform," 12 *U.C.L.A. L. Rev.* 937 at 943–44 (1965).

[211] Bryden, *op. cit.* note 140, p. 296. See also Dallstream and Hunt, "Variations, Exceptions and Special Uses," 1954 U. Ill. L.F. 213. "Stripped of all planning jargon", says Richard Babcock in *The Zoning Game*, (Madison: Univ. Wis. Press, 1966) "zoning administration is exposed as a process under which isolated social and political units engage in highly emotional altercations over the use of land, most of which are settled by crude tribal adaptations of medieval trial by fire, and a few of which are concluded by confused *ad hoc* injunctions by bewildered courts."

[212] Dukeminier and Stapleton, *op. cit.* note 163, p. 292–93.

[213] See Note 132.

[214] IBID.

[215] Numerous suggestions have been advanced to inject an element of objectivity into the variance procedure. See e.g. Sullivan, "Flexibility and the Rule of Law in American Zoning Administration," in *Law and Land*, 142 (Haar ed. 1964) (State review board—special courts to hear variance petitions). See also Babcock, "The Chaos of Zoning Administration: One Solution," 12 *Zoning Digest* 1 (1960). (State Zoning Commission).

> The zoning ordinance, master plan, and the subdivision regulation are all bulwarks against the innovator. Their very rigidity is the essence of their usefulness. The constant lowering of population densities, while open land disappears at an unprecedented rate, thins out the potential population so that when the match boxes have been placed on larger and larger lots, our worthy citizens breath a sigh of relief and exclaim 'Hallelujah, there is no more land!'[216]

It must be admitted that the developer's point is worthy of some attention.[217] The rigidity of the zoning structure is, after all, responsible for the need to resort to the variance device in the first place. Quoting again from Professors Dukeminier and Stapleton:

> The primary reason for this metamorphosis[218] (of the variance) is not far to seek. It lies in the unrealistic assumption of Euclidian[219] zoning that little flexibility is needed and in the difficulty of using the amendment and special exception devices to achieve the flexibility which experience has shown to be necessary.[220]

It is the rigidity of the zoning aparatus, therefore, which has contributed to the frequent misuse of the variance.[221]

Rezoning by Variance

In practice the variance is used not only to achieve flexibility but to "rezone" as well. Some zoning administrators see their job as that of affecting substantial changes in land use regulations. This is clearly a legislative and not an administrative function.

The chairman of one county zoning board of appeals has outlined the factors which shape board policy in this way:

> . . . time and circumstance have put great strain on the zoning pattern. Most communities passed their zoning laws a quarter of a century ago. The rush of city dwellers to suburb, the decentralization of industry, the advent of arterial highways skirting the edge of town, the growth of community shopping centers, . . . have all helped jar the relationship between residential, commercial, and industrial areas. These are some of the factors before a board of zoning appeals when it decides to grant or deny an application for a variation.[222]

Another temerarious administrator has indicted the widespread usurpation of legislative power in these words:

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[216] Lloyd, "A Developer Looks at Planned Unit Development," 114 *U. Pa. L. Rev.* 3 at p. 5.

[217] William H. Whyte, *The Last Landscape,* Doubleday and Co. Garden City, N.Y. 1968 p. 39. It is quite possible that in time we may have ordinances for *maximum* lot sizes. If the community is reconciled to housing more people and wants to save open space, it will have to reverse course and demand that the developer use less land for putting up his houses.

[218] The change referred to is that of perverting the variance from a device to protect the zoning ordinance from constitutional attack by alleviating unique hardship into a device used to induce flexibility in administration. See footnote 159 and text *supra.*

[219] The phrase "Euclidian zoning" was added to zoning parlance by Professor Haar. It was coined not from the system of geometry which it resembles, but from the case which declared it constitutional: *Euclid v. Ambler Realty Co.* 272 U.S. 365 (1925). See notes 43 and 45 *supra.* See Haar, "Emerging Legal Issues in Zoning," in Planning 138 (1954). See also Dukeminier and Stapleton, *op. cit.* p. 339.

[220] Dukeminier and Stapleton, *op. cit.* note 163, p. 341.

[221] See Robert Seaver, "The Albatross of Localism," *House and Home,* Vol. 24, No. 6, Dec. 1963 pp. 99–203.

[222] Dallstream and Hunt, "Variations, Exceptions and Special Uses," 1954 *U. Ill. L. F.* 213 at 214. See Bryden, *op. cit.* note 201, p. 297.

> Too often variances have been granted in the past because individual members of the board, without regard for the conditions set up in the zoning ordinance, felt that variances were best for the city, would remove an eyesore, or that the city commission was behind times in changing a zone.[223]

The problems which flow from this practice of rezoning by variance are several. First it means that zoning decisions are made by those who lack the necessary expertise to do the job well. Administrative boards normally "lack comprehension of the planning goals of the community and the conditions necessary for achieving those goals." [224] Secondly, major land use decisions must be made interstitially on a parcel-by-parcel basis. Broad zoning changes can only be made as the landowners petition for variance from the ordinance. Third, the rights of similarly situated landowners are not protected by the application of uniform principles known to those seeking a variance. As a result, landowners frequently

> . . . assume the Board sits like a Turkish cadi dispensing justice out of an unwritten Koran . . . The form letter of appeal, given petitioners by the building inspector, does not indicate what legal grounds there are for hardship and what evidence they will be expected to produce.[225]

Fourth, rezoning by variance has made swiss cheese of the zoning map rendering it useless to prospective purchasers of zoned property. "Since a variance is nowhere recorded in a manner so that it is readily discoverable by a purchaser of property in the area, the purchaser buys at his peril." [226]

These four progeny of rezoning by variance should indicate a genetic weakness in traditional zoning. However, they may also cause one to wrongly assume that the legislative process has been replaced by administrative procedures. While the above weaknesses are weaknesses of zoning per se, in the case of open land the normal route of land use change is via rezoning—and not variance. Modern zoning practice has evolved a number of legislative devices which rival any administrative system for flexibility. Since these particularized zoning classifications constitute legislative acts which are relatively free from judicial scrutiny, many of the administrative problems just discussed are avoided.

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[223] Souter, "Zoning Appeals: How a Board of Zoning Appeals Functions," 40 *Mich. S.B.J.* 26 at 29 (1961).

[224] Dukeminier and Stapleton, *op. cit.*, note 163, at 337.

[225] *Id.* at p. 323. A Palo Alto city attorney once wrote that "Many planning commission hearings have taken on the character of an oriental bazaar where applicants wheel and deal with the commission on conditions and restrictions to be imposed on zoning. Some hearings are more like ancient circuses in the coliseum of Rome in the days of Nero except that the Christians then got a better deal from the lions than some applicants do from the planning commission. Now, instead of thumbs down or up the planning commission asks for a show of hands. Too often decisions are not based on facts or master plans, but on pressures of bitterly complaining or approving neighborhood improvement associations who are coming out from every rock, packing council chambers and snowing commissions with petitions. The protection of health, safety and general welfare has been forgotten in the desire to control competition, keep out foreigners, favor special interests, obtain public right of way for free, zone tax users out and high tax payers in." Robert Michalski, "Zoning—The National Peril," *Planning*, 1963 (Selected papers from the Annual Planning Conference of the American Society of Planning Officials), at pp. 62–64.

[226] *Id.* at p. 339.

Planning Unit Development [227]

One of the most successful devices for regulating a large scale development is known as the planned unit development. Through this technique the rigidity of Euclidian zoning which is best adapted to regulating existing developed areas, is not allowed to foreclose the application of modern concepts of landscape architecture and community planning.

The term "planned unit residential development" has been defined as "an area with specified minimum contiguous acreage to be developed as a single entity according to a plan containing one or more residential clusters or other residential housing units with an established overall maximum density; with appropriate commercial and institutional uses primarily for the benefit of the planned unit residential development." [228]

Planned unit development assumes prospective application of the zoning restriction permitting mixed land uses and mixed building types and clustering.[229] It is a useful device for assuring the adequate provision of open space from the inception of the development.

Phased Zoning

To obviate the problem of rezoning an area which is not needed or used for the newly permitted land use, local government may provide in one ordinance for the zone change to become effective on a phased basis. The zone change may become effective first on only a fraction of the area. The second fraction would be automatically rezoned when the first fraction is used for the permitted purpose.

Contract Zoning

A relatively high degree of control may be obtained by executing a contract between government and the developer. Local government promises to rezone the land in exchange for the developer's promise to use the land in a certain way.

While the contract zoning device has been disapproved in several states,[230] and has not yet been sanctioned by the California courts,

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[227] The planned unit development approach has great potential as a means of preserving open space in urban areas. It is only incidental to this study, but this should not be read as diminishing the importance of this device. For a more detailed explanation of planned unit development, consult the following sources: Mandelker, *Controling Planned Residential Developments,* (1966); Goldston and Scheuer, "Zoning of Planned Residential Developments," 73 *Harv. L. Rev.* 241 (1951); Clark, "Unified Development Controls, or Greater Flexibility in Zoning," 16 *Zoning Digest* 265 (1964); Craig, "Planned Unit Development as seen from City Hall," 114 *U. Pa. L. Rev.* 127 (1965); Bair, "How to Regulate Planned Unit Developments for Housing—Summary of a Regulatory Approach," 17 *Zoning Digest* 221 (1965); Hanke, "Planned Unit Development and Land Use Intensity," 114 *U. Pa. L. Rev.* 15 (1965); Urban Land Institute, *Legal Aspects of Planned Unit Residential Development,* Technical Bull. No. 52 (1965). There is a possible conflict between the aggregate unit approach and Cal. Govt. Code Sec. 65852, which calls for uniformity of restrictions within each zone. But see *Millbrae Ass'n for Residential Survival v. Millbrae,* 262 Cal. App. 2d 69 Cal. Rptr. 251 (1968); *Cheney v. Village 2 at New Hope Inc.,* 429 Pa. 626, 241 A 2d 81 (1968) discussed in Zucker and Wolffe, "Supreme Court Legalizes PUD: New Hope from New Hope," 2 *Land Use Controls,* No. 2, p. 32 (1968).

[228] Proposed statute to amend Title 40 of the Revised Statutes of New Jersey, Article I, Section 1.3 (40). Mimeographed April, 1969 by New Jersey Department of Community Affairs.

[229] The terms clustering and planned unit development are frequently used interchangeably. It is more precise to use clustering to denote one device which may or may not be employed in a planned unit development. Since clustering involves the consolidation of residences for intensive land use in order to reserve extensive open space as part of the development, it is frequently used in planned units. See Dyckman, Book Review, 12 *U.C.L.A. L. Rev.* 991 (1965).

[230] *Baylis v. Baltimore,* 148 A. 2d 429.

it is widely practiced in California. This is a useful device for guaranteeing that land which is zoned in a given way is so used. This discourages speculation in attractively zoned land and permits government to tie zoning more closely to planning.[231]

Conditional Zoning

It is possible to key the effective date of a zone change to the performance or occurrence of such conditions as open space dedication, removal of structures or the recordation of deed restrictions.[232]

The Floating Zone

Where a zone classification is outlined in the ordinance but is not assigned a geographic location, it is known as a floating zone. Local government may use such a zone as a bargaining tool in negotiating with the developer. When a development is proposed which meets the criteria established in the floating zone, it may be designated on the zoning map.[233]

Overlay Zones

Placing the same parcel of land in two zones so as to allow the property to be put to any use which comports with either of the two categories is known as overlay zoning. Such a procedure is normally coupled with a "sinking zone" by which the unused zoning designation expires automatically upon the exercise of the other zone classification.

Exclusive Zoning

As has already been noted, it is difficult to restate the position of the California courts on the question of exclusive zones. The case of *McCarthy v. Manhattan Beach* has been said to indicate that in California local governments do have a limited power to impose zoning restrictions which are narrowly defined.[234]

However, there is considerable authority supporting a contrary view in many other jurisdictions. In discussing this issue, Dukeminier and Stapleton comment that

> Nowhere in the field of zoning law do we find any indication that the zoning authority may establish a zone or district that is limited to only one particular use. Our concept of the legitimate scope of the zoning power does not extend it to the point of embracing the power to restrict the use of property other than to reasonable general classifications.[235]

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[231] See Comment, "The Use and Abuse of Contract Zoning," 12 *U.C.L.A. L. Rev.* 897 (1965); Comment, "Validity Rules Concerning Public Zoning and Private Covenants: A Comparison and Critique," 39 *So. Cal. L. Rev.* 409 (1966); Comment, "Municipal Endorsement of Private Restrictive Covenants: An Innovation in Land-Use Control," *44 Tex. L. Rev.* 741; *Baylis v. City of Baltimore,* 219 Md. 164, 148 A. 2d 429 (1959).

[232] See Strine, "The Use of Conditions in Land-Use Control," 67 *Dick. L. Rev.* 109 (1963); Crolly, "The Rezoning of Properties Conditioned on Agreements with Property Owners," *N.Y. L. J.,* March 8, 1961, p. 4; I Rathkopf and Rathkopf, *The Law of Zoning and Planning,* at 26–10, note 14 (3rd ed. 1960). For a recent California case upholding conditional zoning, see *Scrutton v. County of Sacramento,* 275 A.C.A. 464 (1969).

[233] *Smith v. County of Santa Barbara,* 243 Ca. 2d 126. See also Haar and Hering, "The Lower Gwynned Case: Too Flexible Zoning or An Inflexible Judiciary?" 74 *Harv. L. Rev.* 241 (1959). See also Dukeminier and Stapleton, *op. cit.,* note 163 at 342, Comment, "The Floating Zone: A Potential Instrument of Versatile Zoning," 16 *Cath. U. L. Rev.* 85, (1966).

[234] See note 79 and accompanying text *supra.* See also *Roney v. Board of Supervisors,* 138 Cal. App. 2d, 740 (1956) upholding an exclusive industrial zone.

[235] Dukeminier and Stapleton, *op. cit.,* note 163, at 341; note 206 and text.

In view of the many devices available to the zoning practitioner, there appears to be little need to rely on the variance as *the* sole means of achieving flexibility. But the fact these malleable techniques exist in the face of wide abuse of the variance would indicate that not all of zoning's weaknesses are structural. It would perhaps be more useful to view zoning practice as a political rather than a legal system.

One of the legal limitations on zoning which is at least quasi political in origin is the taboo against consent zoning. The proponents of using conventional zoning as an enforceable restriction for purposes of Article XXVIII often suggest that "exclusive agricultural" zoning effectively restricts land to open space uses. Professor Hagman has indicated that in California "Many ordinances . . . provide for application and removal of exclusive agricultural zoning based on some measure of landowner's consent." [236] With a few notable exceptions, his point is clearly valid. He suggests further that "These consent provisions make the zoning open to attack." [237]

Zoning is an exercise of the police power. It is not for the regulated to define the regulation. It is black letter law that a) the legislative body may not be compelled to remove a zoning restriction upon the consent of neighboring landowners [238] b) a legislative body can not abdicate the power to zone in the future except on request of landowners [239] and c) no decision to remove a zoning restriction may be delegated to a majority of the neighboring landowners.[240]

The prohibition against spot zoning represents a second judicial limitation upon the zoning power.[241]

The notion that zoning for purely aesthetic purposes is not permissible has been said to represent another legal limitation upon the zoning power. But while this doctrine has a venerable heritage, courts have steadily chipped away at it.[242]

Justice Jacobs of the New Jersey bench has written that:

> . . . it is in the public interest that our communities . . . should be made pleasant and inviting and that primary considerations of

[236] Hagman, *California Zoning Practice,* (Cal. CEB), 1968, Sec. 6.14.
[237] IBID.
[238] *Stockton v. Frisbie and Latta,* 93 Cal. App. 277, 270 P. 270 (1928).
[239] 32 Ops. Cal. Atty. Gen. 145 (1958).
[240] *Hurst v. Burlingame,* 207 Cal. 134, 277 P. 308 (1929). See generally Witnall, "Moral and Legal Pitfalls Along the Paths of Planning Commissions," 4 *Inst. on Planning and Zoning,* 1, 12 (1963).
[241] In the words of Mr. Chief Justice Gibson: "So-called 'spot' zoning results in the creation of two types of 'islands' . . . the objectionable type arises when the zoning authority improperly limits the use which may be made of a small parcel located in the center of an unrestricted zone. The second type of 'island' results when most of a large district is devoted to a limited or restricted use, but additional uses are permitted in one or more 'spots' in the district." *Wilkins v. City of San Bernardino,* 29 Cal. 2d 332 at 341; 175 P. 2d 542 at 549 (1946).
[242] See Norton, "Police Power, Planning and Aesthetics," 7 *Santa Clara Lawyer* 117 (1967); Note: "Aesthetic Zoning: A Current Evaluation of the Law," 18 *Univ. Fla. L. Rev.* 430 (1966); Agnor, "Beauty Begins a Comeback: Aesthetic Considerations in Zoning," 11 *Journal of Pub. Law* 260 (1962); Dukeminier "Zoning for Aesthetic Objectives: A Re-appraisal" 20 *Law and Contemp. Prob.* 218 (1955) and Rodda, "The Accomplishment of Aesthetic Purposes Under the Police Power," 27 *So. Cal. L. Rev.* 149 (1954); comment, "The Place of Aesthetics in Zoning," 14 *DePaul L. Rev.* 104 (1964); comment, "Zoning, Aesthetics and the First Amendment," 64 *Columb. L. Rev.* 81 (1964); comment, "Aesthetic Control of Land Use: A House Built upon the Sand?" 59 *N.W. Univ. L. Rev.* 372 (1964) and *Varney and Green v. Williams,* 155 Cal. 318, 320, 100 P. 867, 868 (1909) where it all began. Many authorities contend that if land may be regulated for aesthetic purposes, it may also be taken for that purpose by eminent domain. Compare Gromley, "Urban Redevelopment to Further Aesthetic Considerations: The Changing Constitutional Concepts of Police Power and Eminent Domain," 41 *N.D. L. Rev.* 316 (1965) and Hagman, *op. cit.* Sec. 3.79.

> attractiveness and beauty might well be frankly acknowledged as appropriate . . . in the promotion of the general welfare of the people.[243]

In the words of one New York court, "Beauty may not be queen, but she is not an outcast beyond the pale of protection or respect. She may at least shelter herself under the wing of safety, morality or decency."[244]

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[243] *Point Pleasant Beach v. Point Pleasant Pavilion,* 3 N.J. Super. 222; 66 A 2d 40 (1949).

[244] *Pulmutter v. Greene,* 259 N.Y. 327; 182 N.E. 5, 6 (1932).

REVIEW

Euclidian zoning . . . at the age of fifty, is showing definite signs of old age. We are not sure that hardening of the arteries can be cured by small, or even massive, doses of Geritol.[245]

The result of this dissection of zoning is to raise the question whether traditional zoning can be of any use in the implementation of Article XXVIII.

It may be helpful to recap what we have seen thus far. In 1957 Section 402.5 was added to the Revenue and Taxation Code. That section directed the assessor to value land zoned and used exclusively for agricultural purposes on the basis of its agricultural use and no other.[246] The Attorney General construed 402.5 as simply restating existing law.[247] The rationale of this opinion was that if the restriction placed upon the use of land by zoning ordinance amounted to a real restriction, it would have a depressing effect upon the market value of the land. The assessor, basing his assessment upon market value,[248] would properly arrive at a proportionately lower assessed value.

In practice, assessors generally ignored zoning restrictions in valuing land. They did so on the ground that zoning had no effect upon market value and therefore did not justify lower assessed valuation. The reason that zoning failed to have an effect on market value was that buyers knew the restriction could be removed in one way or another when they as landowners desired to convert the use of the land. To buttress this argument, assessors pointed out that even if the ordinance were properly administered, no legislative body has the power to restrict their exercise of legislative power in the future. It follows therefore that a legislative body may not bind its successors. From this assessors concluded there was no assurance that a future legislative body would not either rezone a given parcel of land or do away with the ordinance altogether.

The amendment of 402.5 in 1965 established a rebuttable presumption that a zoning ordinance enacted pursuant to a general plan of land use was permanent. This amendment and Revenue and Taxation Code Sec. 402.1, which replaced it in 1966,[249] thus shifted the burden of proof to the assessor. It then became necessary for the assessor to establish the likelihood of rezoning on a case by case basis.

By the enactment of A.B. 2011 [250] in 1967, the Legislature denied to the assessor the use of sales data in valuing land subject to con-

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[245] Dukeminier and Stapleton, *op. cit.* note 116, at 350.

[246] Cal. Rev. and Tax Code Sec. 402.5. See also Joint Committee on Open Space Lands, *Open Space Law in California*, May 1968, pp. 4–14.

[247] 30 Ops. Cal. Atty. Gen. 246 (1957) Opinion No. 57–119.

[248] Cal. Const. Art XI, Sec. 12, "All property subject to taxation shall be assessed at its full cash value." Cal. Rev. and Tax. Code, Sec. 110, "Full Cash value . . . means the amount at which property would be taken in payment of a just debt from a solvent debtor." Mr. Justice Traynor found "full cash value" to mean "the price that property would bring to its owner if it were offered for sale on an open market." *De Luz Homes v. County of San Diego*, 45 Cal. 2d 613, 290 P. 2d 544 at 554 (1955). See notes 132 to 133 with text *supra*.

[249] Stats. 1966, 1st Ex. Session, Ch. 147 (A.B. 80).

[250] Stats. 1967, Reg. Sess. Ch. 1711 (A.B. 2011) (Sec. 1, 3 and 4).

tracts authorized by the Land Conservation Act (Williamson Act).[251] The same denial of the use of sales data was extended to the valuation of land under Williamson Act agreements[252] or scenic easement deeds[253] which were as restrictive as contracts.[254]

In effect, the Legislature said that in its view, the restrictions imposed by (1) contract, (2) a qualifying agreement, or (3) a qualifying deed, are sufficient to justify requiring the assessor to ignore sales data and to assess on the basis of what the land can earn in its restricted use. Restricted use value is to be the assessment basis whether or not there is any effect upon the market value of the land as a result of the restriction.

There are many reasons why the Legislature felt justified in compelling the assessor to ignore sales data in the three cases mentioned. Most of them are not relevant to this discussion of zoning. Basically, the Legislature concluded that by using a Williamson Act ten year automatically renewable contract as the yardstick for measuring restrictions, the public would have some assurance of deriving the benefit of its bargain.

In recent years the proposal has been made with increasing frequency that the Legislature give similar sanction to conventional zoning. The proposal that zoned land should be assessed in the same way as land subject to Williamson Act contracts for purposes of assessment raises several difficulties:

First, in so doing, the Legislature would deprive the assessor of his most convenient and irrefutable index of market value, i.e., sales data on comparable land.

Second, the Legislature would be deciding that for assessment purposes, the value of zoned land is the value attributable to the legally permissible uses.

Third, such a decision would imply that the amount of tax load shifted to other taxpayers equals the public value of open space.

Fourth, the Legislature would be compelled to face the problem of legal impermanence. It would be difficult to remain mute on the question of local government's inability to bind itself and its successors to a given course of action. Unless this issue is resolved, the public will have no assurance that the open space land will remain open for a period of time sufficient to justify the tax shift resulting from use based assessment. This problem is not insoluble. It could, for example, be resolved by adopting a program of open space reservation via the police power in which the state would play a role.

Fifth, the Legislature would be overriding the judgments of assessors and professional appraisers in both state and local government as to the effect and permanence of zoning. Such a move should follow circumspection. The policies followed by assessors and the State Board of Equalization have not been developed in a vacuum. They are the product of legislative, administrative, and judicial decisions. Decades of applying the evolving law to factual situations has yielded an imposing

[251] Comment, "Assessment of Farmland Under the California Land Conservation Act and the 'Breathing Space' Amendment," 55 *Cal. L. Rev.* 273.
[252] Cal. Govt. Code, Sec. 51255, *et. seq.*
[253] Cal. Govt. Code, Sec. 6950, *et. seq.*
[254] Cal. Rev. and Tax. Code, Sec. 422 (where the agreement or deed, taken as a whole, provides restrictions, terms, and conditions which are substantially similar or more restrictive than those required by statute for a contract.)

body of assessment doctrine. The Legislature may be reluctant to flout these established procedures and standards.

Sixth, if the state were to assume a role in the zoning process, it may conflict with the home rule provision of the Constitution.[255] Zoning has traditionally been considered a "municipal affair."[256] Charter cities are regulated solely by their own charters where municipal affairs are concerned.[257] The state may, of course, preempt the field of zoning altogether and declare it to be a state rather than a municipal affair. A simpler approach would be to narrow the scope of state involvement to zoning for open space only. This would focus the state preemption on open space regulation, leaving all other zoning as it is. Whatever the resolution, there appears little reason for the doctrine of home rule to preclude some sort of open space control for the limited purpose of achieving the objectives of Article XXVIII. Local government would, after all, retain its full regulatory power within the structure of its present zoning system.

The seventh difficulty encountered in establishing zoning as an enforceable restriction concerns its administration. The Legislature would be derelict if it were to arbitrarily confer upon the zoning system attributes which are manifestly lacking.

One of the conclusions of the study of zoning administration conducted by Professors Dukeminier and Stapleton was that:

> The Board's decisions reflect very little concern with the rule of law and the values that emanate therefrom. It is arguable that the rule of law has been replaced here by rule of fiat, but more probably it has been largely replaced by anarchy.[258]

Without traducing zoning *per se,* it is apparent that its regulatory structure contains serious flaws for purposes of Article XXVIII.

These considerations give some indication of the problems involved in establishing zoning as an "enforceable restriction" within the meaning of Article XXVIII. Indeed, as far as traditional zoning is concerned, these problems may well prove insurmountable.

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[255] Article XXVIII begins "Notwithstanding any other provisions of this Constitution." Any program enacted pursuant to Article XXVIII, therefore would not be confined by Article XI or any other provisions of the Constitution. It is unlikely that the Legislature would be constitutionally compelled to preempt even one facet of local zoning. For a general examination of the issue see comment, "Zoning: Variance Administration in Alameda County," 50 *Cal. L. Rev.* 101, at 110, note 61. For more detailed analysis of the preemption problem see Blease, "Civil Liberties and the California Law of Preemption," 17 *Hastings L.J.* 517 (1966); Van Alstyne, *Background Study, Article XI, Local Government,* a report to the California Constitution Revision Commission; Peppin, "Municipal Home Rule in California I," 30 *Calif. L. Rev.* 1 (1941); Peppin, "Municipal Home Rule in California II," 30 *Calif. L. Rev.* 272 (1942); Peppin, "Municipal Home Rule in California III: Section II of Article XI of the California Constitution," 32 *Calif. L. Rev.* 341 (1944); Sandalow, "The Limits of Municipal Power Under Home Rule: A Rule for the Courts," 48 *Minn. L. Rev.* 643 (1964).

[256] See note 173 *supra.*

[257] Cal. Const. Art. XI, Sec. 6, "Cities and Towns . . . organized under charters . . . adopted by authority of this Constitution are . . . empowered . . . to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in their several charters, and in respect to other matters they shall be subject to and controlled by general laws."

[258] Dukeminier and Stapleton, *op. cit.* note 163, at 303. Other commentators have been still more critical. After prolix documentation one noted scholar wrote harshly that "The running, ugly sore of zoning is the total failure of this system of law to develop a code of administrative ethics. Stripped of all planning jargon, zoning administration is exposed as a process under which multitudes of isolated social and political units engaged in highly emotional altercations over the use of land, most of which are settled by crude tribal adaptations of medieval trial by fire, and a few of which are concluded by confused ad hoc injunctions of bewildered courts." Richard F. Babcock, "The Chaos of Zoning Administration," 12 *Zoning Digest,* 1 (1960).

From this it is evident that programs which will achieve the purposes sought by Article XXVIII are urgently needed. Land use problems are so diverse and complex that it is doubtful, however, that any single approach will resolve the array of difficulties facing California. Any adequate program must be acceptable to both the public and the individual landowner. It must: (1) give greater initiative and control to government in the selection of land to be preserved; (2) provide needed flexibility to meet the demands of urban growth; (3) allow rights of landowners suffering unique hardship to be decided judicially rather than administratively; (4) allow local governments to meet open space needs in a manner consistent with long-range community planning; and (5) provide sufficient permanence and stability to guarantee public benefits and prevent abuse.

In approving Article XXVIII the people of California voiced a desire that the question of open space preservation be made a matter of statewide concern. In addition to the local impact of open space retention, therefore, an adequate open space program must be geared to the open space needs of the state as a whole.

Part IV

CONCLUSION

Fertile valleys have been destroyed forever in the uncivilized conviction that every man is entitled to his own drab little box. In too many of the choicest coastal areas, California has become a vast unkempt and unlovely bedroom.[259]

It is the job of the judiciary to protect private property from unreasonable governmental infringement. Courts act as a check to guard against legislative over-reaching. The attitude of the courts of any given jurisdiction furnishes the most accurate indicia of legislative freedom. If the attitude of the judiciary is rigorous in confining legislative action within traditional bounds, two conditions follow. First, very little experimentation is likely to be undertaken locally. Second, the legislature is forced to construct a system which is less flexible than that possible in a more liberal jurisdiction.

California courts have historically recognized the need for legislative discretion. Thus the police power has become, through judicial approbation, a versatile tool for land use control.

While the California courts have demonstrated that they will allow creative use of the police power, local government has been unwilling to cast aside outdated and often moribund machinery. Due largely to the architecture of zoning, the only significant police power program, the range of latitude allowed by the courts has not been tapped by government at any level.

In case after case California courts have shown that the line between regulation and taking is drawn in response to two factors: (1) the extent of the public need, and (2) the relative burden to the landowner. Where the burden upon the landowner outweighs the public benefit, the scope of the police power is narrowed accordingly. Where acute public necessity is present, a great deal of regulation is permitted.

Numerous California cases have indicated that the court will allow greater regulatory power when government either lessens the burden upon the landowner or confers a benefit upon him to which theretofore he was not legally entitled. The "taking-regulating" line will, in other words, be shifted in the direction of greater regulation when government gives some form of consideration to the landowner. That consideration need not be monetary.

The importance of this ability to legislatively extend the parameters of the police power should not be overlooked in considering the benefits that can be given the landowner under Article XXVIII. It may well be possible to encourage local legislative and administrative bodies to utilize the full measure of their police power authorization where such an exercise is necessary to protect the public interest. It may also be possible for the California Legislature to extend the limits of police power control in regulating the use of open space land through use of its Article XXVIII authorization.

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[259] Population Reference Bureau, "California: After 19 Million, What?" *Population Bulletin,* Vol. XXII, No. 2, June 1966 p. 30.

By conferring upon the owner of open space land the benefits of an assessment procedure related to the use of the land and not according to its market value, the Legislature would clearly be providing a consideration to the landowner to which he would not otherwise be entitled. The privilege of use-related assessment, coupled with a program of police power control, could allow government to exercise a high degree of land-use control while avoiding both legal and political pitfalls. Indeed the requirement that land be subject to a sufficiently rigid "enforceable restriction" as a prerequisite to use-value assessment is at the very heart of Article XXVIII.

It should be remembered that use related assessment need be no mere sop to the constitutional Cerberus. It is a form of compensation which could be of significant value to a landowner confronted by high developmental pressures or possessing land with a low income-generating potential. The crippling expense of large scale acquisition would thus be obviated. At the same time, a program of police power open space regulation would be made legally and politically acceptable.

Such a police power program could vest in government the power to guide land use which is consistent with the best interests of the state as a whole. For government to fail now in seizing the initiative to protect our remaining open space land resources is to vest in the few the power to shape the pattern of our State. To allow the interests and problems of landowners to dictate the size, shape, location and character of our cities as well as the character and quality of the landscape is to place greater value in property rights than in the human right to a livable environment.

At the same time:

> Landowners generally must feel that they have received fair value for the rights they have given up if any system of land-use controls is to be politically acceptable. The balance of the bargain may be upset by increasing the restrictions imposed or by decreasing the value received by the landowner in return for accepting the restrictions . . . The criterion must be the effect upon the total value of both individual and communal rights which each member of the community will possess if a particular method of land-use control is adopted.[260]

The interests of landowners and those of the public are not mutually exclusive. One need not dominate the other. But to establish an equitable balance between the two, new programs will have to be instituted.

> There are many agencies on all levels of government directly or indirectly concerned with land for open space purposes, but there is no single agency with the responsibility for coordination of open space activities and preservation of open space. As a result of this lack of a single purpose agency, every agency leaves it to someone else and it does not get done.[261]

If a police power land-use control measure is to be successful over the long haul, it must be protected from the forces which undermined

[260] Bryden, "Zoning: Rigid, Flexible, or Fluid?" 44 *J. of Urb. L.* 287 at 288 (1967).
[261] Eckbo, Dean, Austin and Williams. *Open Space; the Choices Before California,* The Urban Metropolitan Open Space Study directed by Edward A. Williams for the California State Office of Planning. General Finding No. 10, p. F.

zoning. The demands of the market and the call for flexibility will again prevail unless the administrative structure is broadly based and removed from intense pressures.

Zoning did not fail to preserve open space because it was an inherently poor system. It failed first because the economic forces which compete in the land development market were too intense and too immediate to be effectively dealt with locally. It failed also because the public decision maker was too close to the problem. He was exposed directly to the heat of local politics and was furnished no means of insulating himself.

These economic and political pressures were exacerbated by other governmental policies. Too often government failed to consider the land use implications of governmental programs. Major highways were constructed through prime agricultural areas, thereby ensuring the conversion of surrounding land to urban uses. At the same time we provided urban services wherever urban growth demanded them, rather than providing these services only where urban gowth should be located. As one writer put it:

> . . . the growth of American society is attributable in large part to the frontier psychology which insisted that the availability of public services follows the demand rather than controls it.[262]

This report has tried to do five things. First, it has explored the conceptual basis of zoning. It has looked into the very raison d'etre of zoning. Second, it has traced the evolution of zoning. Third, it has outlined the current limitations of zoning. Fourth, it has retraced the tortuous path followed by the Legislature in its attempt to reach equity in the assessment of land. Fifth, it has suggested that the police power could be used by state and local government to achieve the objective contemplated by Article XXVIII.

From this odyssey a number of truths have emerged. Foremost among them is the fact that the Legislature need not adopt a program of police power regulation which divests property rights without compensation. Compensation is built into Article XXVIII. It should also be clear that by compensating the landowner through use-related assessment, the Legislature may authorize the imposition of restrictions which are more rigorous than those allowed under conventional zoning. The reason for this is that where a benefit is conferred upon the landowner, the line between regulation and taking is extended. It should be clear also that courts will not close their eyes to public necessity.

Unprecedented growth has placed severe stress on California's land resources. Courts, like legislatures, cannot escape the consequences of their acts. It is fully possible for the Legislature to dovetail a program of police power regulation with assessment control to meet the critical open space problem now confronting California.

It is probably true, as Arthur Schopenhaur wrote, that "anything which is worthwhile is as difficult as it is rare." Certainly it is true that if we are to avert the decimation of California, a prodigious effort will have to be made. It will require stamina and uncommon courage of our leaders. It may already be too late. Perhaps California is destined to develop into two giant urban areas, "one in the South from

[262] Richard F. Babcock, *The Zoning Game,* 1966, p. 149.

Bakersfield and Santa Barbara to San Diego, with Los Angeles as the hub, and the other in the North from San Jose to Stockton and Sacramento, with San Francisco-Oakland at the center. Nearly all of this growth on California's best lands.'' [267] But to accept this as predictable is also to accept it as desirable.

Whether we are to be, in the words of Goethe, ''the hammer or the anvil,'' the masters or the victims of our own existence, remains to be seen. The winds of change are blowing seeds of hope. They manifest themselves in the form of heightened public concern. One reflection of that concern is evidenced by the broad public support for legislation designed to stem the tide of wholesale conversion of California's open space land. Such a worthwhile goal and such worthy concern deserves our answer.

[267] Dr. Samuel E. Wood, Executive Director of California Tomorrow (since resigned), "Californias' Open Space—A State and Federal Responsibility," Lecture, University of California at Berkeley, Continuing Education in Environmental Design, June 18, 1968, p. 2.

CHAPTER 8

CALIFORNIA LAND CONSERVATION ACT SURVEY

In 1968, this Committee, in cooperation with the County Supervisors Association, sent a questionnaire to each of the 58 counties in California. Many questions were asked relative to the experience of the counties with the California Land Conservation Act of 1965. The results of that survey were presented in the Preliminary Report of the Committee in March 1969.

In 1969, the Committee sent a considerably less probing questionnaire to the counties. The results of that survey are presented in Table I.

Contracts and Agreements Executed

By March 1, 1969, 37 counties had executed contracts or agreements covering 4,252,157 acres. While the question was not asked, it is assumed that all of the new acreage was made subject to agreements rather than contracts.

Prime Agricultural Land

The counties reported that 572,611 acres were prime agricultural land as defined in the California Land Conservation Act (Section 51201). However, Alameda, Butte, El Dorado, Fresno and Sonoma Counties did not respond to this question. It can safely be assumed that some of the land subject to contract or agreement in these counties is prime land.

Using the incomplete figures, the prime land acreage is approximately 13% of the total land under contract and agreement. This compares with 6% (131,273 acres of prime land out of the total acreage under contract and agreement) on March 4, 1968.

Again using the incomplete reports, the prime land acreage is approximately 8% of the state's prime agricultural land.

Of the new land placed under contracts and agreements between March 1968 and March 1969, 20% was prime agricultural land. This percentage is slightly greater than the percentage of land in farms that is prime land (18%).

Well over half the new prime acreage was in one county, Kern.

Location of Land Under Contract and Agreement

Most of the land under contract and agreement continues to be more than three miles from the boundaries of a city. Only 69,344 acres is situated within one mile of a city. 84,330 acres lies between one and two miles; and 120,915 lies between two and three miles. This represents a total of 274,589 acres within three miles of cities, or 6.4% of the total land under contract or ogreement.

Notices of Non-Renewal

The initial term of nearly all contracts and agreements is ten years. This term is automatically extended by one year on each anniversary of the contract or agreement unless either the owner or the county or city serves a notice of non-renewal. In response to the Committee's question, only four counties reported having received notices of non-

renewal from land owners. Of those counties, Kern received one; San Mateo, three; Santa Clara, 2, and Sonoma, 2. The land involved will remain under restriction until the remaining nine years have passed. No county reported having served a notice of non-renewal.

Petitions for Cancellation

In addition to serving a notice of non-renewal, the owner of land subject to contract or agreement may petition for immediate cancellation of the contract or agreement. The county or city may grant such a petition if "the continued dedication of land under such contracts to agricultural use is neither necessary nor desirable" for the purposes of the California Land Conservation Act. The board of supervisors granting such a petition must make specific findings:

"(a) That the cancellation is not inconsistent with the purposes of the Act; and
(b) That the cancellation is in the public interest.

In addition, the statute states:

"The existence of an opportunity for another use of the land involved shall not be sufficient reason for the cancellation of the contract. A potential alternative use of the land may be considered only if there is no proximate, non-contracted land suitable for the use to which it is proposed the contracted land be put.
"The uneconomic character of an existing agricultural use shall likewise not be sufficient reason for cancellation of the contract. The uneconomic character of the existing use may be considered only if there is no other reasonable or comparable agricultural use to which the land may be put."

Subject to these conditions, three counties report having received petitions for cancellation. Kern County has received two; San Mateo, eight; and Stanislaus, one.

The two petitions filed in Kern County were rejected by the Board of Supervisors.

The petition filed in Stanislaus County was on 9.8 acres of land which inadvertently had been included in the owner's application through an error in the property description. The petition was granted almost immediately after the agreement was approved by the Board.

San Mateo County approved all of the eight applications, thus removing 893 acres of land from contracts. While one of the applications had been approved earlier on forty acres of land, the others were filed under a special rule of the Board of Supervisors who were desirous of responding to the claim of a few landowners who were among the first to execute agreements in that County, that they had not fully understood either the nature of the restrictions or the difficulty of cancelling the agreements. Under these circumstances, the Board of Supervisors offered to receive and grant petitions during a limited period, with the explanation that land remaining under contract or agreement after the expiration of that period would be subject to a strict enforcement policy on cancellation. Under those circumstances, seven petitions were granted on 853 acres. The other 34,590 acres in San Mateo County were not affected.

On the basis of the experience of counties with respect to notices of non-renewal and cancellation, the Committee concludes that both counties and landowners are looking upon California Land Conservation Act contracts as long term and meaningful commitments.

Capitalization Rates

While the Legislature in 1969 amended Section 423 of the Revenue and Taxation Code to spell out the method of determining the capitalization rate to be used in valuing land subject to enforceable restrictions, these new provisions were not in effect for the 1969–70 assessment year.

Capitalization rates for 1969–70 were, therefore, determined by county assessors under the same statutory provisions as in 1968–69. Generally, capitalization rates were higher than in the previous year, ranging from 6% to 10½%, with both the median and the average being 8%. Both the median and average were 7% for 1968–69.

The 1969 amendments require a "built-up" capitalization rate consisting of three components, of which the major one is interest. Under the new law, the interest component is determined by the yield rate on long term United States Government Bonds as announced by the Federal Reserve Bank.

Had these amendments been in effect during the 1968–69 and 1969–70 assessment years, the increase in such yield rates would have dictated an increase in capitalization rates of only one-quarter percent.

However, since valuation of land under this program is a relatively new procedure, an average increase of one percent in capitalization rate is not considered to be unwarranted.

TABLE I

CALIFORNIA LAND CONSERVATION ACT OF 1965 (WILLIAMSON ACT)

Miscellaneous Information by County—March 1, 1969

	Total Acres	Acres Prime	Distance From Cities			Notices of Non-Renewal	Petitions for Cancellation	Cancellations Approved	Acres Cancelled	1968–69 Cap Rate	1969–70 Cap Rate
			0–1 Miles	1–2 Miles	2–3 Miles						
1. Alameda	64,846	--	4,225	5,389	4,978	--	--	--	--	7½	8.87
2. Amador	32,000	--	--	--	--	--	--	--	--	--	8.0
3. Butte	59,165	--	--	--	--	--	--	--	--	7	--
4. Calaveras	23,798	--	--	--	--	--	--	--	--	7	--
5. Contra Costa	28,627	--	11,425	--	3,046	--	--	--	--	--	9
6. El Dorado	156,205	--	--	--	--	--	--	--	--	7½	--
7. Fresno	423,243	--	--	--	--	--	--	--	--	8½	8½
8. Kern	958,775	294,588	580	6,600	20,260	1	2	--	--	8	9½
9. Lake	17,390	732	167	203	709	--	--	--	--	--	8.5
10. Madera	174,977	14,189	--	500	1,800	--	--	--	--	7	7+
11. Marin	89,185	--	6,743	5,256	6,045	--	--	--	--	7	6¼
12. Mendocino	31,244	651	--	7,730	6,523	--	--	--	--	9	10
13. Monterey	327,627	48,327	--	1,000	3,300	--	--	--	--	5+	6
14. Napa	2,316	2,316	--	70	150	--	--	--	--	--	--
15. Orange	80,621	10,219	16,012	16,234	17,019	--	--	--	--	--	--
16. Placer	29,676	700	2,243	170	700	--	--	--	--	6–9	6–9
17. Riverside	10,145	8,000	500	2,045	5,000	--	--	--	--	8½	6½
18. Sacramento	179,900	3,160	--	--	--	--	--	--	--	--	6½
19. San Benito	337,709	500	60	--	1,200	--	--	--	--	6	7½
20. San Bernardino	4,074	4,074	1,592	1,419	1,063	--	--	--	--	6.5–8.5	--
21. San Diego	10,335	900	900	--	--	--	--	--	--	--	--
22. San Joaquin	91,781	45,780	--	--	--	--	--	--	--	--	--
23. San Luis Obispo	13,536	800	--	--	--	--	--	--	--	--	8
24. San Mateo	34,590	--	2,300	3,140	4,810	3	8	8	893	8–8½	8–9
25. Santa Barbara	148,938	6,688	3,468	1,293	277	--	--	--	--	3 + N.P. 5 + P.	7
26. Santa Cruz	2,600	775	--	520	200	--	--	--	--	--	7 + Risk
27. Santa Clara	171,271	7,638	9,480	16,052	16,441	2	--	--	--	7½	7½
28. Shasta	1,917	33	--	--	--	--	--	--	--	--	8
29. Siskiyou	3,250	--	--	--	--	--	--	--	--	--	10½
30. Solano	104,700	47,600	6,800	10,700	15,700	--	--	--	--	7.1	7¾–9¾
31. Sonoma	151,074	--	500	700	1,500	2	--	--	--	--	--
32. Stanislaus	55,617	2,781	123	1,568	992	--	1	1	9.8	--	9
33. Tehama	93,932	30,000	--	--	--	--	--	--	--	8½	--
34. Tulare	206,490	30,160	765	550	2,360	--	--	--	--	8	8
35. Tuolumne	113,772	--	81	1,006	1,966	--	--	--	--	7	7
36. Ventura	10,543	10,543	1,380	1,840	4,870	--	--	--	--	--	8
37. Yolo	3,505	1,457	--	345	--	--	--	--	--	--	8
1969 Totals	4,252,157	572,611	69,344	84,330	120,915	8	11	9	9,028		
1968 Totals	2,061,968	131,273	19,676	24,968	39,778						

APPENDIX A

ARTICLE XXVIII

CALIFORNIA CONSTITUTION

OPEN SPACE CONSERVATION

Section 1. The people hereby declare that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence open space lands for the production of food and fiber and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The people further declare that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of the article to so provide.

Section 2. Notwithstanding any other provision of this constitution, the Legislature may by law define open space lands and provide that when such lands are subject to enforceable restriction, as specified by the Legislature, to the use thereof solely for recreation, for the enjoyment of scenic beauty, for the use of natural resources, or for production of food or fiber, such lands shall be valued for assessment purposes on such basis as the Legislature shall determine to be consistent with such restriction and use. All assessors shall assess such open space lands on the basis only of such restriction and use, and in the assessment thereof shall consider no factors other than those specified by the Legislature under the authorization of this section.

APPENDIX B

The following data is taken from *The Urban-Metropolitan Open Space Study* conducted by Eckbo, Dean, Austin and Williams for the California State Office of Planning, November 1965.

COST OF ACQUIRING OPEN SPACE PROPOSALS [1]

1965–1970

By Probability of Encroachment, by Kind of Acquisition and by Region

Region	*Acres*	*Cost 1965 (dollars)*	*Cost 1970 (dollars)*
HIGH ENCROACHMENT—FULL FEE (FF)			
North. Calif.	184,022	357,171,466	535,757,199
Fresno	5,037	12,092,500	19,347,500
Tahoe-Sierra	4,005	9,026,340	11,282,925
South. Calif.	79,408	1,061,493,439	1,295,502,200
Palm Springs	--	--	--
Bakersfield	--	--	--
TOTAL FF	272,472	1,439,783,745	1,861,889,824
HIGH ENCROACHMENT—LESS-THAN-FEE (LTF)			
North. Calif.	141,509	183,880,161	270,303,836
Fresno	83,335	35,916,486	51,001,410
Tahoe-Sierra	--	--	--
South. Calif.	177,527	604,867,750	762,133,365
Palm Springs	2,934	10,344,000	11,895,600
Bakersfield	55,420	8,847,050	10,085,637
TOTAL LTF	460,725	843,855,447	1,105,419,848
TOTAL FF & LTF	733,197	2,283,639,192	2,967,309,672
MODERATE ENCROACHMENT—FULL FEE (FF)			
North. Calif.	106,548	112,348,430	165,152,192
Fresno	29,075	36,343,750	58,150,000
Tahoe-Sierra	2,181	1,092,500	1,365,625
South. Calif.	15,748	63,311,634	79,772,658
Palm Springs	--	--	--
Bakersfield	--	--	--
TOTAL FF	153,552	213,096,314	304,440,475
MODERATE ENCROACHMENT—LESS-THAN-FEE (LTF)			
North. Calif.	98,130	40,774,617	58,307,702
Fresno	96,925	46,817,826	72,099,452
Tahoe-Sierra	3,380	680,875	851,093
South. Calif.	29,382	165,229,150	201,579,563
Palm Spring	--	--	--
Bakersfield	9,932	1,674,008	2,024,550
TOTAL LTF	237,749	255,176,476	334,863,360
TOTAL FF & LTF	391,301	468,272,790	639,303,835

COST OF ACQUIRING OPEN SPACE PROPOSALS[1]
1965–1970—Continued

LOW ENCROACHMENT—FULL FEE (FF)			
North. Calif.	303,893	121,013,463	196,041,810
Fresno	3,605	1,977,500	2,966,250
Tahoe-Sierra	13,955	2,790,860	3,470,666
South. Calif.	30,887	61,430,414	78,016,625
Palm Springs	--	--	--
Bakersfield	6,120	2,484,000	2,790,000
TOTAL FF	363,460	189,696,237	283,285,351
LOW ENCROACHMENT—LESS-THAN-FEE (LTF)			
North. Calif.	335,063	125,804,413	173,610,008
Fresno	90,658	22,747,400	30,708,990
Tahoe-Sierra	14,651	484,694	560,867
South. Calif.	14,506	34,142,595	39,263,984
Palm Springs	--	--	--
Bakersfield	30,320	1,236,460	1,483,752
TOTAL LTF	485,198	184,379,562	245,627,601
TOTAL FF & LTF	848,658	374,075,799	528,912,952
GRAND TOTAL FF & LTF	1,973,156	3,125,987,781	4,135,526,459

[1] Full fee proposals include those by existing federal, state and local agencies (approximately 331,000 acres).

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CALIFORNIA LEGISLATURE

FIFTEENTH REPORT

OF THE SENATE FACT-FINDING

SUB-COMMITTEE

ON

UNEMPLOYMENT

Senator [illegible]

Senator [illegible]

Virgil [illegible]

[illegible]

[illegible]

CALIFORNIA LEGISLATURE

FIFTEENTH REPORT OF THE SENATE FACT-FINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES

1970

MEMBERS OF THE SUBCOMMITTEE

SENATOR HUGH M. BURNS, *Chairman*

SENATOR JOHN F. McCARTHY
SENATOR RICHARD J. DOLWIG
SENATOR H. L. RICHARDSON
SENATOR JACK SCHRADE

R. E. COMBS, *Counsel*

Virginia Anderson, *Secretary*
Mary E. Albright, *Secretary*

Published by the

SENATE

OF THE STATE OF CALIFORNIA

LIEUTENANT GOVERNOR ED REINECKE
President of the Senate

JACK SCHRADE
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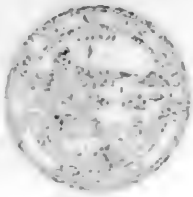
CALIFORNIA LEGISLATURE



FIFTEENTH REPORT OF THE SENATE FACT-FINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES

1970

FOREWORD

No inference of subversive affiliation or activity should be made solely because the name of a person, organization, or publication, is mentioned in this report.

Previous reports are now out of print, but may be found in the reference rooms of public libraries in California.

A FINAL WORD FROM THE CHAIRMAN

This 1970 report of the Senate Fact-Finding Subcommittee on Un-American Activities is the last it will be my privilege to submit as the subcommittee's chairman.

My work as a member of this committee and its predecessor committees for some 30 years, and as its chairman the past 20 years, has been among my most rewarding service in the 34 years I have been a member of our State Legislature.

As an Assemblyman, I was honored by appointment as a member of the Joint Fact-Finding Committee on Un-American Activities in 1941, and ultimately to the Senate Fact-Finding Subcommittee on Un-American Activities when it was created in 1947.

Obviously I was honored when I was selected as chairman of the Senate committee in 1949, and I felt my colleagues had conferred upon me a great trust and privilege to serve.

The rewards of this service have been many and satisfying, despite vicious attacks by subversive groups throughout the country and by the left-wing and ultra-liberal press.

Offsetting these continuing attacks has been the support of a vast majority of my fellow Americans, including but not limited to the members of veterans' organizations, patriotic groups and the business and industrial communities.

For this strength-giving support, I am grateful, and I am sure that I am correct in expressing the gratitude of the legislators who have served with me on these committees over the years.

Now the time has come for me to pass the leadership in this vitally important work to another Senator.

It is my hope the Senate will continue this committee, or a like committee, so that the important work begun some 30 years ago can be continued as a safeguard to our State and Nation. We must continue to advise the

Legislature, and the citizens of our great State, of the dangers of uncontrolled and sometimes ignored subversion.

Your Fact-Finding Subcommittee on Un-American Activities has been a leader and an example for other Legislatures in the field of reasonable, effective investigation of subversion. It has been one of the very few vehicles available for advising the public, our citizens, and our officials of the details of the threat from Un-American activities by both the extremists of the left and those of the right.

Your committee has kept the spotlight of publicity firmly on subversion by the Communist world conspiracy and from other sources as no other governmental agency has been able to do.

Only by continuing to recognize and publicize subversion can such activities, in the long-run, be countered.

It has been a privilege and an honor to participate in this American activity.

HUGH M. BURNS
Chairman

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, AUGUST 3, 1970

HONORABLE ED REINECKE
President of the Senate, and
Gentlemen of the Senate

Senate Chamber, Sacramento, California

MR. PRESIDENT AND GENTLEMEN OF THE SENATE: Pursuant to Senate Rules Resolution No. 7, amended December 10, 1969, under authority of Rule 12.5 of the Standing Rules of the Senate, the Senate Fact-Finding Subcommittee on Un-American Activities of the General Research Committee was created and the following Members of the Senate were appointed to said subcommittee by the Senate Committee on Rules: Senators Hugh M. Burns, Chairman, Richard J. Dolwig, John F. McCarthy, H. L. Richardson and Jack Schrade.

The committee herewith submits a report of its investigation and findings.

Respectfully submitted,

HUGH M. BURNS, *Chairman*
JOHN F. MCCARTHY
RICHARD J. DOLWIG
H. L. RICHARDSON
JACK SCHRADE

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INTRODUCTION

When the 1964 demonstrations at the Berkeley campus of the University of California occurred the public was incredulous, angry and confident that the trouble would be quickly handled by the authorities. But the trouble was not handled quickly, or at all. Instead it mounted in intensity and then spread from campus to campus throughout the State and across the country. At first a typical united front action, as that device is utilized in Communist circles, it developed into a para-military activity with its own propaganda, its own underground presses, its own tough and experienced leadership.

We may allude here to the fact that we had warned that trouble was brewing at Berkeley. We said so in our published reports and we gave the reasons.

On Page 89 of our 1961 report, under the heading, "Approaching Crisis on the Campus," we stated that "Quick to take advantage of the slightest opportunity, the Communist Party in California is now solidifying its position so far as the indoctrination and recruitment of youth is concerned. From sources that we consider eminently reliable, we have learned that the United Front movement we described in our 1959 report will be employed in this effort to manipulate the numerous radical student organizations on the various campuses of our state university, at private institutions and in our state and junior colleges, into collaboration with Communist fronts and other groups that are in sympathy with the general Communist line."

Our use of the term United Front was ridiculed as nonsense, but we now have complete proof that this is precisely the device that was used, and that it is still being used by a number of groups that we have investigated recently, including the Black Panther Party.

In the May 31, 1968, issue of *The Black Panther,* the organization's official publication, there is an official call for people to attend the United Front Against Fascism conference in Oakland July 18–20, 1968. And on pages 12 and 13 of that publication is a reprint of the entire

United Front speech delivered by Georgi Dimitroff in the Soviet Union in 1935.

The Dimitroff speech and excerpts therefrom were repeated in following issues of *The Black Panther* publication.

It is obviously impossible to fight subversion without some understanding of the techniques and strategies it employs. Since the 1964 Berkeley rebellion, the united front tactic has been used again and again, each time with considerable success, by various subversive groups that have been especially active since the issuance of our last report in 1967.

It will be the purpose here to trace the nature and activities of these various groups, together with their leadership and their relationships with other organizations. It is not our intention to present any detailed account of the various disturbances and demonstrations that occurred throughout the State, especially in southern California, during the past two years. We will discuss those that were of particular significance, but for the most part these disturbances were adequately treated in the press and other news media and do not warrant additional discussion here.

It is an axiom of the dialetic principle that every action engenders a reaction. Dialetic materialism is the basis of Marxian ideology, and we may observe in passing that Marx did not originate this concept. He borrowed it from the German philosopher Hegel, who in turn borrowed it from the Greek philosopher Sophocles. It is not peculiar to Marxism but has been modified and embraced by Marxists ever since the Communist Manifesto was promulgated in 1848. In our own state, the epidemic of violence on our campuses and in our streets, the destruction of buildings owned by the state, the insults and physical attacks against educational administrators, and the mounting campaign to defy all public authority, as might be expected, produced counteraction in many areas of our society. In general it has disgusted the vast majority of our people, has moved the Legislature to enact stern measures to deal with the situation, it has provoked increased activities on the part of law enforcement agencies, and, which is more important to our present discussion,

it has brought into existence a whole series of ultra-right, semi-vigilante type organizations that we shall hereafter describe in detail.

Ten years ago the Communist front organizations that were active in California had been in existence for a number of years. Their leaders were well-known, their activities stereotyped, and they operated on a permanent basis. We have described them in our previous reports, such large Communist-dominated organizations as the Civil Rights Congress, the Joint Anti-Facist Refugee Committee, and the Citizens Committee to Preserve American Freedoms—to cite a few examples. At the other end of the political spectrum of extremist organizations was the National States Rights Party, the Ku Klux Klan, the Minutemen, and the American Nazi Party.

In those days there were only two Communist organizations operating in the United States that posed any real threat. One was the Communist Party of the United States, and the other was the Socialist Workers Party, or Trotskyist Party. Both are now more active than ever, and, as we shall hereafter indicate, it is our view that the Communist Party of the United States by quietly reaching into and assuming control of other organizations, presents a more serious threat than at any time in its history of more than 50 years.

When we issued a report concerning the disturbances at Berkeley, we were ridiculed from many quarters because we ascribed the disturbances to some hardcore Communist leaders. We very much doubt that anyone now would dispute that during those demonstrations of 1964 there was a united front collaboration between the Socialist Workers Party, the Communist Party, and a wide variety of smaller but Marxist-oriented groups, such as the Progressive Labor Party, Spartacist League, and small student groups that came and went as the situation demanded.

It will be our purpose in this report to first discuss the major organizations that function with Communist leadership and with Communist control, and that are now active in California. We will then describe some of the organizations of the extreme right.

These estimates and evaluations have been gained through contacts with police departments, sheriff's offices, the California Department of Criminal Identification and Investigation, and other concerned official agencies. In all instances, we have been accorded complete and thorough cooperation, for which we are grateful, and which allows us to present an accurate estimate of subversive operations and conditions in the southerly and most populous portion of our state.

Thereafter it will be our purpose to similarly give an estimate of the situation in the Bay area. Lack of facilities has prevented us from making a survey of the northern California counties, but in considering the fact that they are remotely located from large metropolitan areas and have relatively small populations, we have found that there is also an extremely low incidence of subversive activities that diminishes the farther one proceeds toward the Oregon border.

SOUTHERN CALIFORNIA ORGANIZATIONS

Dow Action Committee

The Dow Committee was created during the early months of 1968. At first it held its meetings at 555 North Western Avenue, Los Angeles, in quarters that were also being used by the Peace Action Committee, another major organization which will be discussed later. The purpose of forming this organization was to protest against the manufacture of Napalm by the Dow Chemical Company which then maintained its southern California offices at 2600 Wilshire Boulevard. During the three years of its existence, the Dow Action Committee staged several demonstrations in front of the Dow Chemical Company office, and participated in united front demonstrations throughout the southern part of the State, with many other organizations that were either under Communist domination, or were strongly oriented towards Marxism. We are fortunate in having copies of the minutes and other official documents of Dow Action Committee, obtained for us by members to whom they were freely circulated.

Represented in the membership of the Dow Action Committee were officers of the Socialist Workers Party, or Trotskyist organization; the Student Mobilization Committee; Veterans for Peace; Communist Party; Progressive Labor Party; Peace Action Council, and many other smaller but extremely militant organizations. By March 1968 the organization had its new headquarters at 746 South Alvarado Street, Los Angeles, Room 9, and on Monday, March 4, 1968, at 8:00 P. M., it held its general membership meeting at that address. One of the early leaders of the organization was Oscar Coover, whom we have identified in several of our previous reports, as one of the officers and leaders of the Socialist Workers Party, or Trotskyite group, in Los Angeles. We should once more make it clear that the only difference between the Communist Party of the United States and the Trotskyist Communists lies in their ideological

differences and their animosity toward each other. They will occasionally participate in joint activities through some united front movement, but the implacable hatred that stems from the bitter campaign of Joseph Stalin against Leon Trotsky and which culminated in the assassination of the latter at his Mexican refuge in the summer of 1940, still lingers and has provoked personal encounters of violence between Communists and Trotskyists in the past several years. This deep rivalry between the two Communist organizations has resulted in strenuous efforts on the part of each to take over any organization in which both are represented. Usually, because of the superior numbers and the more subtle techniques employed by the Communist Party of the United States, it has managed to prevail.

Quoting from the minutes of the Dow Action Committee meeting of February 19, 1968, we find that on the agenda were the following items:

> "Report of action, February 16, 1968; SDS (Students for Democratic Society) conference report; Mass Action Committee report; Boycott Committee report; Education and Research Committee report; Publicity Committee report; Fund Raising Committee report; Office; New Business, and Announcements."

At the meeting of February 13, 1968, it was obvious that the influence of the Trotskyists had become so powerful that the matter was openly discussed at the meeting, and it was decided that a united front approach should be adopted, and that no one faction in the organization should be permitted to dominate its activities. At the meeting of March 11, 1968, Mr. Coover was elected chairman, and in the announcement for the next meeting, which was to be held on March 18, it was stated that there would be a demonstration and picket line in support of H. Rap Brown at the new Federal building, 300 North Los Angeles Street, Los Angeles. The announcement requested members of the Dow Action Committee to be present and participate, and this was the beginning of its interest in a variety of activities that had nothing whatever to do with the Dow Chemical Company or any of its products.

Among the organizations that received support from Dow Action Committee were Southern Conference Educational Fund, 8247½ Blackburn Avenue, Los Angeles, California 90048. This organization and its Communist infiltration has been discussed in other reports. Similar support was given to the United Farm Workers Organizing Committee; The Peace Action Council, a Communist-controlled front organization; Students for a Democratic Society; Student Non-Violent Coordinating Committee, and also the same organization after it had dropped the "Non-Violent" from its name; Student Mobilization Committee; San Gabriel Valley Veterans for Peace, and Liberation University, 1400 West Jefferson Boulevard, Los Angeles, 90007, at which guerrilla warfare and Marxism were featured among the other courses.

This was nothing new so far as the activist organizations of the extreme left are concerned. It will be developed as our description of the other organizations is set forth, that it was an exceptional occurrence if members from all the activist groups did not join in participating in demonstrations, picket lines, sit-ins, marches, pressure tactics and propagandizing—usually under the guise of peace.

In 1969 headquarters for the Dow Action Committee was at 619 South Bonnie Brae Street, Los Angeles, 90057. Its organization during that year was considerably increased and expanded, although it occasionally met in other quarters. For example, the meeting on February 19 was held in Room 101, Berendo Junior High School, at 1157 South Berendo, Los Angeles. Members frequently brought guests to meetings of the committee, and in some of its demonstrations there was close collaboration with such well-known Communist Party members as Nemmy Sparks, Dorothy Healey, Ben Dobbs, and Irving Sarnoff. Mr. Sarnoff, as will be seen, is the leading official in the Peace Action Council, one of the largest and most active of the Communist-controlled front organizations now operating in California. He was present at a meeting of the Dow Action Committee as a guest on June 3, 1968, and attended meetings thereafter from time to time. During the latter part of March 1968, the secretary of the Dow Action Committee reported at a membership meeting that Irving Sarnoff had gone to Chicago for the purpose of

helping to arrange demonstrations there, and at the meeting held August 12 of that year at 619 South Bonnie Brae Street, Los Angeles, Morris Kight explained the disruption tactics that were to be followed at the Democratic National Convention in Chicago. He declared, in the presence of those assembled, that Jerry Rubin was to lead his followers in a "wear-down" tactic on a 24-hour basis preceding the convention. The purpose of this tactic was to erode police efficiency and follow the pre-convention confrontations with seven other major demonstrations, in which the Rubin followers were to be assisted by the Chicago Anti-Draft Resistance. Three members from the Dow Action Committee were to go to Chicago, and those delegated were Morris Kight, Marcia Silverstein and James Boggio. Upon arrival they were housed in a fraternity house at the University of Chicago, but soon were summarily ejected because they persisted in propagandizing for Black Power. This description was the substance of a report by Morris Kight, both by telephone from Chicago, and later to a regular meeting of the Dow Action Committee.

By January 1969, a great many members of the Dow Action Committee began to lose interest in the proceedings and spent their time attending meetings of other similar organizations which they considered more dynamic and productive. The Dow Action Committee was a regular affiliate of the Peace Action Council, headed by Mr. Sarnoff, paid monthly dues to the Council, and, as many Council members were also affiliated with the Dow Action Committee, there were often conflicts in meeting dates and participation in demonstrations. Students for a Democratic Society also shared office space in the same building as the Dow Action Committee and similar organizations, but by February 1969 had allowed mail to accumulate and neglected to pay for their rent, telephone bills, and other expenses that originally were to be shared by the various organizations that occupied the premises.

In a communication dated January 12, 1969, the Dow Action Committee declared that its expenses were exceeding income and requested assistance from other groups "in the Freedom Movement". At the same time internal dissensions that are characteristic of these organizations were plaguing Dow Action Committee, and evidence of

impatience and disillusionment were being expressed in written statements from leading members. The April 1969 issue of *Peace Happenings,* announced that "We have been meeting at one another's homes since our move from 619 (South Bonnie Brae). Those wishing to attend the main meeting, call to get the address," and four telephone numbers were listed.

The Dow Action Committee provides an excellent example of an organization which was started for a specific purpose, to stage demonstrations and campaigns against the manufacturer of Napalm. But, almost from its inception the group attracted publicly-known Communists, such as Oscar Coover of the Trotskyist Socialist Workers Party, and thenceforth the organization widened its activities and participated in demonstrations with a variety of other groups, collaborated with numerous functionaries of the Communist Party and sent its delegates to participate in activities in Chicago, San Francisco and various other communities in California.

We must make it clear, as we have in previous reports, that not all of the members of the Dow Action Committee were Communists, which is true of all front organizations. But from affidavits of members, from reports of agents, from the written documents in our possession that were issued to members and to the public, the true character of the Dow Action Committee is established. It actively collaborated with, and included in its membership, leaders of subversive Communist organizations, and it actively cooperated with subversive groups during the entire period of its existence. By February 1970, the Dow Action Committee had ceased to function. Its members, as will be seen, drifted into various other organizations, particularly the Peace Action Council, which has its headquarters in Los Angeles, and which is one of the most active and largest Communist-dominated organizations now operating.

Peace Action Council

Communists have always found it handy to advocate peace for all non-Communist governments unless they fought for and not against a Communist regime. The principle of just and unjust wars is almost as old as Marxism itself. According to the Marxist definition, an

imperialist war is one which the world Communist movement opposes; a peoples war is one it favors. World War II was therefore branded as imperialist until the invasion of the Soviet Union in June 1941, and thereupon became a peoples war against fascism. During the peoples war period the Communist line was to obtain a maximum of military assistance from the United States. Prior to that time and during the existence of the Non-Aggression Pact, the line called for massive peace activities in this country and an effort to reduce its military preparedness. Thus from the inception of the Non-Aggression Pact in 1939 until it was breached by Germany by its invasion of Russia in 1941, peace fronts were proliferating throughout the United States. The two most important were the American Peace Crusade and the American Peace Mobilization.

In California the Peace Crusade was launched on June 8, 1940, and among its early officers were Don Healey and Phillip M. Connelly. Raphael Konigsberg acted as the coordinator for the California Peace Crusade in the 44th Assembly District. (1948 *California Report,* pages 160, 161.)

After World War II these peace fronts became dormant, but were quickly reactivated with the attempted seizure of the South Korean regime by North Korean Communists, and with the invasion of South Vietnam by the Vietnamese Communists from the north, and United States participation in both conflicts. According to the Marxian definition these were imperialist struggles, and all Communists were obliged to resist the American forces with demonstrations, propaganda and all resources at their command.

Accordingly, the Southern California Peace Crusade was activated in 1951, and continued its activities into July 1956. The notice of its dissolution was dated July 21 1956, and signed by Vicki Landish, executive director.

Miss Landish, whose married name was Fromkin when she testified before us in 1950, stated that she was a graduate of the University of California at Berkeley, and the evidence submitted in connection with her appearance established she had been an organizer for the Young Communist League in the East Bay area and devoted virtually all of her time to the youth adjuncts

of the Communist Party. The name of the young Communist organization has been changed from time to time —American Youth for Democracy, Labor Youth League, DuBois Clubs of America—but the changes have had little effect on the nature of activities of the youth movement of the Communist Party in the United States. The evidence which was presented at the 1950 hearing also established that in 1944 the witness attended the first California State convention of American Youth for Democracy at 1631 West Adams Street, Los Angeles; that in 1946 she was listed as an officer of American Youth for Democracy in a letter signed by its executive secretary, Myer Freiden. In that letter he gave the officers as: Chairman, Jeanette Salve; Recording Secretary, Lee Herendeen; Student Secretary, Vicki Landish; offices situated at 408 South Spring Street, Los Angeles. (See 1948 *California Report,* page 185; letter from Myer Freiden, dated January 8, 1946.)

In 1947 Miss Landish was the executive secretary for American Youth for Democracy in Los Angeles, and in the following year was a state officer in that organization, with headquarters situated at 1201 South Alvarado Street, Los Angeles. (See 1948 *California Report,* pages 184, 185, 188; 1951 report, pages 24, 26, 29, 32).

Shortly after the Peace Action Council was activated, it opened its 1967 office at 555 North Western Avenue, Room 3, Los Angeles, 90004, and its by-laws were adopted on September 27 of that year. Article II provided that "the Executive Board shall be composed of members elected by the following organizations, in the number indicated:

Student Mobilization Committee	3
Draft Resistance Groups (organization not yet designated)	1
Women's Strike for Peace	1
Women's International League for Peace and Freedom	1
Women for Legislative Action	1
Emma Lazarus Jewish Women's Clubs	1
East Los Angeles Peace Center	1
(additional from the Mexican-American Community, organizations not yet designated)	1 or more
The Black Community (organizations not yet designated)	1 or more
SANE Trade Union Committee	1
Trade Unionist for Peace	1
Physicians for Social Responsibility	1
University Committee on Vietnam	1

Valley Peace Center	2
West Side Committee of Concern	1
Long Beach Citizens for Peace	1
San Gabriel Valley Emergency Comm.	1
Orange County Peace and Human Rights Council	1
Assembly of Men and Women of the Arts	1
American Friends Service Committee	1
Clergy and Laymen Concerned About Vietnam	1

It will be noted that this list of organizations did not include the Communist Party or the Socialist Workers Party, Trotskyite Communists, Students for a Democratic Society, or any specific racial minority extremist group. There were a total of 21 organizations affiliated through the Peace Action Council, the list growing to 77 affiliated organizations by 1969.

As an indication of the growth of the Peace Action Council between 1967 and 1969, we set forth from its own official records a list of the 1969 affiliated organizations.

"American Mental Health Professionals Acting for Peace;
Assembly of Men and Women in the Arts Concerned With Vietnam;
California Federation of Young Democrats;
Californians for Liberal Representation;
Clergy and Laymen Concerned About Vietnam;
Committee Council for Opposition to the War in Vietnam;
Communist Party;
Community Council—Claremont;
Dow Action Committee;
East San Gabriel Valley Emergency Council;
East Side Information Center;
Echo Park—Silver Lake Neighbors for Peace;
Fellowship for Social Justice of the First Unitarian Church (Los Angeles);
Glendale Anti-War Committee;
Humanist Association of Los Angeles;
Independent Young Democrats of San Fernando Valley;
Los Angeles Committee for Defense of the Bill of Rights;

Los Angeles Jewish Cultural and Fraternal Order;
Los Angeles Friends of the Minority of One;
Labor Assembly for Peace;
Emma Lazarus Jewish Women's Club Assembly for Peace;
Emma Lazarus Jewish Women's Clubs (Los Angeles Council, Hollywood Chapter, Mid-town Chapter, Oreska Chapter, Wilshire Chapter);
Long Beach Citizens for Peace;
Malibu Discussion and Action Group;
Northeast Peace Committee;
Orange County Committee to End the War;
Orange County Peace and Human Rights Council;
Pasadena Emergency Council;
Peace and Freedom Party, County Council, Forum Club, Hollywood Hills Club;
Peace Happenings;
Physicians for Social Responsibility;
San Fernando Valley Committee of Concern;
San Gabriel Valley Emergency Council;
Socialist Parties;
Socialist Workers Party;
Social Workers for Peace;
South Bay Peace Council;
Southland Jewish Organization, (Freedom Chapter);
Students for a Democratic Society;
Teachers for Peace in Vietnam;
Trade Unionists for Peace;
University Committee on Vietnam;
Valley Peace Center;
Veterans of the Abraham Lincoln Brigade;
Vietnam Summers;
War Resistors;
War Resistors League;
West San Gabriel Valley Emergency Council;
West Side Committee of Concern on Vietnam, Council, Beverly Hills Chapter, Beverly Wood Chapter, Brentwood Chapter, Mar Vista and West Los Angeles, Pacific Palisades, Santa Monica, West Hollywood;
Womens International League for Peace and Freedom, Los Angeles Chapter, Pasadena Chapter, San Gabriel Chapter, Southern California District Council;

Women for Legislative Action, Council, Central Chapter, Day Chapter, Evening Chapter, Valley Chapter, Valley Evening Chapter, West Chapter;
Womens Strike for Peace, Council, Centinela-South-Bay Harbor, Los Angeles-Beverly Hills, Laurel Canyon, San Fernando Valley, Santa Monica-Venice, West Los Angeles, Whittier;
Young Socialist Alliance."

Leadership of Peace Action Council

We have seen that one of the first officers in the Reactivated Peace Organization in Los Angeles was Don R. Healey. Identified as a member of the Communist Party by several witnesses, Mr. Healey has engaged in Communist activities since the late 30's. He married Dorothy Ray in 1941, was secretary of the Communist-dominated Labors Non-Partisan League in Los Angeles, and worked on a publication called *Age of Treason,* which was published by the American Peace Crusade during World War II. He was assisted by Philip M. Connelly, who became Dorothy Healey's husband after she divorced Don Healey, and who also has been identified several times as a member of the Communist Party. Both of these men worked with Raphael Konigsberg, who was prevented from becoming a member of the California State Bar Association because, having passed the Bar examination, he refused to state whether or not he was a member of the Communist Party. He was formerly an officer in a Communist front organization which we described in our 1963 report, and which was known as the Citizens Committee for the Preservation of American Freedoms. Frank Wilkinson, another identified Communist and head of another front organization now operating nationwide from its base in Los Angeles, was also an officer of this organization. Indeed, Konigsberg succeeded Wilkinson as its executive secretary and has acted as treasurer for the Peace Action Council.

Probably the most important member of this organization, however, is Irving Sarnoff, its chairman. Mr. Sarnoff's record as a Communist is both long and impressive, and we can do no better than quote from an official publication of the House Committee on Un-American Activities issued on April 3, 1959, page 50 of which

describes Mr. Sarnoff's activities and affiliations as follows:

> "Sarnoff is a member of the District Council, Communist Party, Southern California. He has been extremely active in Communist youth organizations, the American Youth for Democracy, and the successor organization, the Labor Youth League. In 1956 he was labor director of Los Angeles County Labor Youth League; member of the executive committee, Labor Youth League; and in 1957 a delegate to the California State Labor Youth League Convention. He was a delegate to three Communist Party conventions in 1957, the Los Angeles County Convention, the California State Convention, and the Southern California District Convention. Sarnoff was born on May 25, 1930, in New York City.
>
> Sarnoff appeared as a witness before the Committee on September 5, 1958, and invoked the Fifth Amendment in response to questions concerning his Communist membership and activity. Occupation: Railroad car inspector."

Sophie Silver was a faithful member of the Peace Action Council, and was usually present at its membership meetings. From the same source from which we quoted the record of Mr. Sarnoff, we give a similar record concerning Mrs. Silver:

> "Mrs. Silver was born Schewe Czeczelnitzki (Chelnick) on September 22, 1899, in Novay, Russia. She arrived in the United States on January 13, 1913, at Port of Philadelphia, Pa. She was naturalized in New York City on November 4, 1943. Mrs. Silver is a member of the District Council, Communist Party, Southern District of California. She was a delegate to and attended the Los Angeles County Communist Party Convention on January 5-6, 1957, the State Convention of the Communist Party on January 19-20, 1957, and the Southern California District Convention on April 13-14, 1957. In 1953, 1954 and 1955, she was a member of the Review Commission, Juarez division of the Communist Party. The Review Commission was commonly referred to as a Disciplinary Commission, a Commission com-

posed of Communist Party members who review cases of Communists charged with activity considered to be detrimental to the Communist program. It is within the purview of the Review Commission to render disciplinary action or recommend expulsion from the Communist Party.

Mrs. Silver appeared as a witness before the Committee on September 4, 1958, and invoked the Fifth Amendment in response to questions concerning Communist Party membership and activity. Occupation: Needle trades worker."

Meetings and Activities

Each member organization of the Peace Action Council paid $10.00 per annum as dues, and the affairs of the Council were conducted by an Executive Board, empowered to "formulate and recommend policies and activities to the Council and carry out all activities delegated to it by the Council." (Peace Action Council By-laws.)

Actually, however, the organization is operated by a steering committee consisting of the "elected officers, a staff member, and 3 other designated members of the executive board." As we shall soon demonstrate, since the steering committee was always dominated by the members of the Communist Party, and since the Peace Action Council effectively squelched all complaints against this concentration of power, it was, from its very inception, operated as a front under the complete domination of the Communist Party.

By October 1967 the Unitarian Fellowship for Social Justice of the First Unitarian Church in Los Angeles had become an affiliated member of the Peace Action Council. This was an important move, since a wide variety of similar organizations had long been in the habit of meeting at the Unitarian Church facilities at 2936 West Eighth Street, Los Angeles. The moving spirit of the Unitarian fellowship was Martin Hall, who also played a leading role in the affairs of the Peace Action Council, was regularly present at its meetings, and, as we shall see, played a vital role in arranging trips abroad for officers of the organization who attended meetings behind the Iron Curtain.

Mr. Hall appeared as a witness before us in Los Angeles in 1954, and as a result of that hearing it was learned that he was born in Germany and christened Karl Adolf Rudolf Herman Jacobs. He entered the United States in 1937, legally changed his name to Martin Hall in 1938, and became a citizen of this country in 1945. Hall invoked the protection of the Fifth Amendment in responding to all questions concerning his alleged Communist membership and his activities in Germany. From other sources, however, it is learned that he was a leading member of the Communist underground in Germany before he came to the United States, was later active in the Communist-dominated Fair Play for Cuba Committee, and visited Cuba in August, 1960. (*Peoples World,* August 6, 1960). Hall was also a delegate to the World Congress for General Disarmament and Peace, Moscow, July 9 to 14, 1962, under the auspices of World Peace Council, an international Communist front organization. He addressed the Economic Commission, Moscow Congress, and has been described by Benjamin Gitlow, one of the top leaders of the Communist Party of the United States during its early years and a member of the Communist International, as one of the leading figures in the German Communist underground. (See Gitlow testimony, House Committee on Un-American Activities, July 7, 1953; House Committee Hearings, April 26 and 27, 1962; House Committee Report, November 2, 1962).

As the membership of the Peace Action Council steadily grew larger, it held its smaller meetings at the regular office at 555 North Western Avenue, but its larger meetings were invariably held in the facilities of the First Unitarian Church of Los Angeles, an accommodation easily arranged by Mr. Hall, who exercised his influence as the Director of the Unitarian Fellowship for Social Justice.

United Front Control Protested

By May 22, 1968, the Dow Action Committee, and especially some of its Trotskyist Communist members, became dissatisfied with the continued operation of the Peace Action Council by the same small group dominated by Sarnoff, Konigsberg and Hall and their supporters. The Dow Action Committee accordingly filed a four-page

complaint, in which it advocated the abolition of steering and executive committees, and asked that the Council itself make its own policy decisions. "It has become painfully apparent," declared the statement on page 3, "that only a few leaders have developed in the Council." Perhaps the key paragraph in the document was that which was headed "Political Parties." It read as follows:

> "We do think it unfair to all the parties concerned that vast ignorance exists about the political motivation of some of the people involved; that the Establishment condemns the loyal workers in the Council for their alleged political association as being too radical, and that within the Council itself few know that these people represent ideas long out of style and downright conservative, if not reactionary. We deplore the fact that these splinter relics of ancient political and economic concepts have used the Council as a battleground on which to carry out their ego games and revisionist and deviationist tactics."

In the Dow Action Committee, as in the Peace Action Council, there were Stalinists, Trotskyists, Maoists, and a variety of lesser Communist groups—but in none was the control more firmly entrenched than by Sarnoff and his supporters in the Peace Action Council. In all united front movements, the activity commences with a broad-base following, then at the proper time a small group solidifies itself in power. A steering committee was precisely as important to the Peace Action Council as it had been to the Free Speech Movement at Berkeley in 1964, and for precisely the same reason. It is simply an integral and vital element in any Communist united front operation, as promulgated by Georgi Dimitroff, the inventor of this ingenious and highly efficient device. (See 1965 *California Report*, page 116, et seq.)

The Dow Action Committee lacked the tough, disciplined and experienced leadership that headed the Peace Action Council. From that time on its strength dwindled and it finally expired, as we have seen. But the Council gained in strength and in influence. The complaints that were made produced no results whatever, and the complete control of Sarnoff and his associates over the Peace Action Council has continued stronger than ever. Indeed,

at the meeting held on June 26 1968, it was officially determined that the executive board should continue as the key administrative body of the organization.

It is obvious that if the accredited delegates and a few members from each of the affiliate organizations, comprising the Peace Action Council, attended its membership meetings, even the facilities at the First Unitarian Church would be inadequate, and the assemblies would have to move to an auditorium. Actually the attendance at the meetings was rarely more than 30 to 40 people, but as will be seen when we describe a series of key meetings, representatives from the various Communist organizations were invariably present. At these meetings there was a literature table on which appeared propaganda publications from Students for a Democratic Society, the grape boycott of Cesar Chavez, various veterans groups opposed to the war in Vienam, and propaganda material from the Communist Party and various front organizations, but very little from the Trotskyist branch of the Communist movement, although its representatives persisted in attending the membership meetings.

Probably the most faithful member of the Council, other than Sarnoff, was Donald Kalish, head of the Department of Philosophy at the University of California at Los Angeles. He has achieved considerable notoriety in connection with his insistence that Angela Davis, although an admitted member of the Communist Party, be allowed to teach a course at the state-supported institution for credit. Mr. Kalish, who was instrumental in employing Angela Davis, has been listed as a co-chairman with Sarnoff of the Peace Action Council, and has made several trips to Chicago, as well as to other states, in the interest of the Council and some of its affiliated organizations. At the meeting held on May 22 1968, and at which the Sarnoff leadership was attacked, Kalish attracted considerable attention when his chair broke and he fell to the floor. This provoked considerable amusement on the part of some of his associates, but its diversionary effect was not sufficient to prevent the leadership from closing ranks and shunting aside the criticisms. At this meeting, held at the First Unitarian Church, Sarnoff, Konigsberg and Kalish were present, as well as Martin Hall, Mike McCabe, representing the Young

Socialist Alliance, youth section of the Trotskyist Communists, and Mike Klonsky, who was at that time the National Field Secretary for Students for a Democratic Society. Frank Wilkinson's National Committee to Abolish the House Committee on Un-American Activities was also represented by Betty Rottger, who has been active in a number of other front organizations and who regularly attended the Council meetings.

At the meeting held on June 12, 1968, Sarnoff, Konigsberg, Hall, and Mike McCabe were also present. And at the meeting held on July 17, 1968, at 555 North Western Avenue, Los Angeles, plans were formulated for the picketing of Vice-President Humphrey when he arrived in Los Angeles. Sarnoff stated he had an informant in Humphrey's local group, and was informed concerning the itinerary. The motion to picket was made by Konigsberg, but the United States Secret Service was alerted that same night by informants who also regularly attended the meetings of the Peace Action Council for various governmental agencies.

At the meeting held on July 18, which was a general meeting as contrasted to the small meeting held at the North Western Avenue premises the evening before, Sarnoff, Kalish, Konigsberg, Robert Klonsky (Mike's father), and Betty Rottger were present. Miss Rottger stated that she understood Humphrey's visit had been canceled, but Sarnoff telephoned his local contact and reported that the visit to Kansas was the one that had been canceled, not the one to Los Angeles. At this same membership meeting, Kalish was elected to attend the National Mobilization Committee Convention at Cleveland, Ohio, as a delegate, and was scheduled to depart Los Angeles on the following day. The Mobilization Committee Convention was originally scheduled for Chicago, but at the last moment switched to Cleveland where it considered there were better facilities to plan demonstrations. The Anti-Humphrey demonstration was held on schedule at the Century-Plaza Hotel in Los Angeles on Sunday, July 28, 1968, and 3,500 demonstrators participated, which is some indication of the broad influence of the Peace Action Council in Southern California.

On August 22 1968, a special meeting was called for the purpose of discussing "police brutality" during the Century-Plaza demonstration. This meeting was held at

the First Unitarian Church and approximately 200 people were present. Irving Sarnoff acted as chairman, and the meeting was also attended by Rose Chernin, Mike McCabe and Nemmy Sparks. We cite these people for the purpose of indicating the type of top control and support that characterized the Peace Action Council during all of its activities. Rose Chernin has repeatedly been identified as an important member of the Communist party. For years she was Executive Director of an old and firmly established front organization known as the Los Angeles Committee for Protection of the Foreign Born. Recently the name of the organization has been changed to the Los Angeles Committee for Defense of the Bill of Rights, with its office located at 326 West Third Street, Room 318, Los Angeles, 90013. This organization has for its prime purpose the providing of bail and legal services for members of subversive organizations who become entangled with our laws. Mike McCabe we have already mentioned as a national officer of Students for a Democratic Society, and Nemmy Sparks has long been identified as a top member of the Communist organization in Southern California. Quoting from the House of Representatives Report, issued on April 3, 1959, page 31, we find this concerning Sparks' background:

> "Sparks was born Nehemiah Ish-Kishor on March 6, 1899, in London, England. He received derivative citizenship on December 13, 1913, in New York City by virtue of the naturalization of his father. He is a member of the Executive Board of the Southern California District Council and Legislative Director for the party's Southern California district. He joined the Communist Party in 1922. In 1930, he was in Moscow, Russia, as one of the American representatives at an International Trade Union Congress. He has held various positions in the Communist Party throughout the United States—member of the District Executive Committee, Seattle, Wash.; District organizer, Pittsburgh, Pa.; District organizer, Boston, Mass.; Instructor, Workers School in New York City; chairman, Communist Party in Wisconsin; alternate member, National Committee, Communist Political Association. In 1945 he was transferred by the Communist Party from Wisconsin to Los Angeles

and replaced Carl Winter as head of the Communist Party in Los Angeles County. Since his arrival in Los Angeles he has held numerous functionary positions in the Communist Party on the County, State and District levels. Occupation: Professional Communist." (See Report on the *Southern California District of the Communist Party,* House of Representatives Committee on Un-American Activities, April 3, 1959).

One of the results of this meeting on police brutality was a decision to mount another demonstration of protest against the Los Angeles Police Department and other law enforcement agencies to be held on Saturday, September 7, 1968, consisting of a march from Pershing Square to the Police Administration Building. The demonstration took place on schedule, 300 persons participated, and the procession was led by Rose Chernin.

At the meeting held on May 24, 1969, Sarnoff gave an account of his trip to East Berlin, and his visit to Moscow en route. The arrangements for his flight from Montreal in a Soviet plane were made by Martin Hall, and the purpose of Sarnoff's trip was to participate in the preparatory arrangements for the World Peace Assembly to be held in East Berlin June 21 to 24, 1969. Sarnoff returned to East Berlin for that Assembly, and thereafter made a trip to Stockholm where he participated in a study of mass organizing techniques, having described this trip at the Peace Action Council meeting which was held on October 15, 1969. On the occasion of his trip to East Berlin, one of his co-delegates was Arnold Samuel Johnson, 66. Johnson was identified by Attorney General Robert F. Kennedy as National Legislative Director of the Communist Party in 1962, and a member of the National Committee of that organization. He undoubtedly was accorded a more friendly reception in East Berlin than he received in Mexico in 1967, when he was sent back to the United States by Mexican Security Police. (1963 *California Report,* pages 83, 88, 169; *Peoples World,* July 8, 1967.)

It might be noted in connection with the Sarnoff trips to Communist countries and also the one he made to Sweden, that no account of them was given in the press, not even in the Communist press, and so far as we have been

able to discover they are being mentioned herein for the first time. In November 1969, Sarnoff received a free round-trip ticket to Khartoum, Sudan, from the chairman of the World Peace Council, Romesh Chandra. The principal headquarters of this Communist-controlled organization is at Lonn Rotink, 18 v, Helsinki 12, Finland. At the meeting of October 15, 1969, when Sarnoff reported on his experiences at Stockholm, Dorothy Healey was in the meeting as was Robert Klonsky, the father of Mike Klonsky, and at this meeting it developed that the organization was flourishing as it recently loaned $1,000.00 to the New Mobilization Committee that was currently using the Council office space as its headquarters.

Participation at Montreal Conference

At the meeting on December 16, 1968 Sarnoff reported on his experiences at the Hemispheric Conference to End the U. S. War in Vietnam at Montreal, November 28 through December 1 of that year. He provoked considerable interest when he exhibited the front page of Section 2 of the *Montreal Star,* which printed Sarnoff's picture and the statement he was wanted by the F. B. I. for allegedly helping Eldridge Cleaver to jump bail and flee to safety outside the limits of the United States. From Sarnoff's account and from other sources which we will cite later, we learned that about 2000 people attended the conference, which was characterized by many disputes and one brief encounter between the Black Panthers from California and some of the white activists who were present.

There have been several important international meetings conducted by the world Communist movement since the Vietnam War provided a convenient catalyst. We have already described Irving Sarnoff's visits to Moscow, East Berlin, Stockholm, and Khartoum. Another meeting of global signifiance was the Tri-Continental Conference, which was held in Havana in January of 1966, and the Budapest Conference of Communist Parties held the following October.

Preparations were made many months in advance of the Montreal gathering. Scheduled originally to run from October 12 to 14, it actually commenced on November 28 and ran until December 1. The delegates comprised a

conglomeration of revolutionists: American citizens fawning on our North Vietnam enemies, who came from Hanoi by way of Havana; Americans who loudly proclaimed their intent to bring about our violent downfall, fresh from spreading their revolutionary sentiments on our tax-supported campuses. There were Black Panthers, Trotskyists, and the grim and dedicated Moscow-type Communists who actually ran the show. There were do-gooders, opportunists, fanatics and the customary sprinkling of dupes. There were also scattered throughout the 2000 delegates, and fortunately not detected, an observant and capable group of representatives from various official agencies, both from the United States and Canada, from whose accounts we can obtain an accurate idea of what occurred; and there was also a group of journalists and official observers from whose accounts we can also get an accurate account of the conference.

The delegates registered in the basement of the St. James United Church and received orange-colored identification cards, a program of events, and a list of recommended restaurants and housing facilities. A quick survey of the official list of participating organizations, sponsors and individual delegates, provides complete proof of the tight Communist supervision of all the proceedings.

Among the participants and sponsors were the following persons who have been identified as members of the Communist Party: Irving Sarnoff, Professor Raymond Boyer, who achieved notoriety as a participant in the Canadian espionage case during World War II; Frank Wilkinson, Carl and Anne Braden, Jarvis Tyner, Jim Fite, James Jackson, Professor Leon Wofsy, Ben Dobbs, Arnold Johnson (who accompanied Sarnoff to East Berlin), Linda Appelhaus, Sam Kushner, Mike Myerson, Eugene Tournour, Mike Eisencher, and Robert Duggan.

The list of sponsors also included Fr. Blase Bonpane, ex-Maryknoll missionary and presently a peace activist who frequently attended meetings of the Peace Action Council in Los Angeles; Rev. Stephen Fritchman, Pastor of the Los Angeles First Unitarian Church; Dr. Benjamin Spock; Professor Robert Greenblatt, Chairman of the National Mobilization Committee that staged demonstrations throughout the United States; Fr. Groppi,

militant Milwaukee priest who was convicted for his violent attack against the Selective Service System; Mario Savio, former leader of the Free Speech Rebellion at the Berkeley campus of the University of California; Professor Donald Kalish, and Harvey O'Connor, National Leader of the Movement to Abolish the House of Representatives Committee on Internal Security.

Bobby Seale, Black Panther leader from Oakland, was scheduled to make a speech, but a spokesman for the Panther delegation addressed the audience in most abusive terms and complained that no effort had been made to send Seale the necessary funds with which to make the trip. The Panthers then threatened to disrupt the meeting unless a suitable collection was taken. As might also be expected, the Panthers engaged in their usual program of vulgarity and physical combat against a group of young Communist activists, with whose ideology the Panthers then disagreed.

One of the observers at the conference was David E. Gumaer, who spent two years operating as an undercover agent for a police intelligence division and who was able to infiltrate Communist and front activities in general and the W.E.B. DuBois Clubs in particular. He worked in the national office of the DuBois Clubs of America, where he occupied a position of policy-making importance. His account of the hemispheric conference appeared in the February 1969 issue of *American Opinion,* complete with photographic coverage and a detailed description of the entire proceeding.

When Bobby Seale finally arrived at the speaker's rostrum, he explained that the Black Panthers had been formed to resist police violence in the same manner that the North Vietnamese had been compelled to resist attacks against them by the United States—by violence. He called for unity with the Viet Cong, attacked the police as "racist pigs," and promised that the blacks, along with other oppressed peoples, would overthrow and destroy the "avaricious businessmen, the pig police forces, and the pig politicians who pollute the earth. We will not halt," he declared, "until the American Empire and its consequent racism are smashed." One dramatic event, the description of which is agreed upon by all per-

sons who witnessed it, is described by Mr. Gumaer as follows:

> "The audience went wild when a sad little pile of twenty-five American draft cards were burned in a tinfoil dish by North Vietnam's Minister of Culture, and Communist Galdino Guzman Cadena of Mexico.
>
> Crowded around the now surrounded stage, the Comrades cheered as the flames leapt higher, devouring a pile of American military classification cards, a military identification card (which meant the donor had become a deserter), and an American passport. While the smoke and flames curled towards the ceiling, a Black Panther shouted into the microphone: 'That's what an olympic torch should really look like.' Gifts were presented to the Viet Cong, including a check for $2,000.00 from the New York American Friends Service Committee and the Communists' War Resistors League.
>
> Following the immolation ceremony, the emotionally drained Comrades climbed up on tables and chairs, waving red flags and Viet Cong banners. With arms raised in the Communist salute, they stood at attention as the Viet Cong anthem was played over a tape-recorder. Then they raised their voices in crescendo, standing at attention with hands and fists held high, singing the *Communist International.*
>
> I slowly worked my way through the ravening crowd, with those alien words still ringing in my ears, and a lump in my throat, trying in vain to hide the tears streaming down my cheeks. The Comrades, who smiled as I passed, thought I was weeping from the joy of it all. I was weeping for my country."

We have mentioned the disturbances as minor, but should add that they were also frequent. The young Communists who follow the Red Chinese theory of permanent revolution were persistently trying to get control of the proceedings. They clashed with the Panthers, shouted and persisted in distributing propaganda throughout the opening session on Friday December 29, which was held in the St. James Church. Some of the delegates insisted

that since American imperialism was being denounced, that Russian imperialism should also be attacked because of its armed invasion of Czechoslovakia in August, 1968. But as the Moscow Communists controlled the conference, this protest was quickly subdued.

At one point during the violence Rev. Douglas Pilkey of St. James Church insisted on summoning police to quell the fighting at this conference for peace. But he was subdued, also.

Saturday's session was devoted to workshops. The program for the one on "racism" was clearly intended to attract minority groups—mainly Negro and Latin-American—and to convince them that since racism and capitalism are inseparable, then racism could only be eliminated when capitalism is destroyed. The inference concerning the sort of regime that would replace capitalism then becomes too plain to require comment. No mention was made, of course, of anti-Semitism, purge trials, thought-control, forcible invasion of other countries or cultural repressions that exist in Communist countries.

This workshop program is reproduced to show how the entire agenda at Montreal was switched from pleas for peace in Vietnam to a vicious propaganda attack against all non-Communist regimes in general and the United States in particular. At the same time it served to forge an international apparatus that now surrounds our country.

Sunday's program was characterized by additional outbursts of violent fighting between some of the Latin-American delegations. At this point the Black Panthers volunteered their services as security guards and apparently enjoyed their work in speedily moving to quell disturbances.

Irving Sarnoff and other Los Angeles Communists had worked diligently and effectively for months to prepare for this Montreal conference. Their political action committee served as a rallying center. The PAC meetings were devoted to soliciting members to make the trip to Montreal and the propaganda tables were amply supplied with materials such as the exhibits reproduced following this section, especially the one headed, "Los Angeles Organizing Committee, Hemisphere Conference to End

the U. S. War in Vietnam—Peace Action Council, 555 N. Western Ave., Los Angeles, Calif., 90004/HO 2-8188." About 90 persons came from California in the group headed by Sarnoff, and we should make it clear at this point that our ability to describe the proceedings at Montreal in such detail arises from the fact that very few persons were screened for security, and observers were permitted to attend all of the sessions, even some of the workshop meetings. In addition, there were statements by undercover agents for official agencies, reporters for such anti-Communists publications as *American Opinion* and *News and Views,* Vol. 32, No. 2, Feb. 19, 1969, as well as the reports of delegates who attended the conference and from Sarnoff himself, together with accounts in publications of general circulation.

We have treated the Montreal conference at some length and included it as part of our discussion of the Peace Action Council, because this front organization is the largest and most powerful now operating in California. It is headed by a Communist, it is dominated by Communists, and it is essential to understand the scope of its operation and its participation in international Communist meetings, such as the one in Montreal.

Activities 1969–1970

During 1969 and until the spring of 1970, the Peace Action Council has been steadily growing in membership, financial strength, and influence. In addition to the trips abroad by Martin Hall and Irving Sarnoff on global Communist business, and the large attendance at Montreal, other PAC members reported their own foreign travels at various meetings of the organization. Mike McCabe gave an account of his trip to Sweden and Czechoslovakia at the February 19, 1969 meeting. He is a Trotskyist Communist official. At the same meeting, held at 555 North Western Avenue, Los Angeles, Joel Britten described his trip to Havana and his conference with the representative from the North Vietnamese National Liberation Front. Jim Fite, an officer of Students for a Democratic Society, discussed his visit to Sweden and Hungary where he also conferred with agents of the National Liberation Front.

On the literature table at a special meeting held in Room 101, Franklin Hall, Los Angeles City College, on the afternoon of March 1, 1969, some of the leaflets urged attendance at two speeches by Karl Wolff, a leader of SDS in Germany. This organization is comparable to Students for a Democratic Society in the United States, and Wolff is noted for his trips abroad and his exhortations of fellow activists throughout the world to revolutionary activity. Wolff spoke at 619 South Bonnie Brae on Monday March 1, at Los Angeles City College on March 3 in the afternoon, and that evening at 8162 South Melrose in Los Angeles. This gathering in Franklin Hall was specially called to lay plans for a demonstration on March 6. Among those present were Sarnoff, Betty Rottger, Mike McCabe, and Raphael Konigsberg.

As the role of the PAC demonstrations became more important, so did its security precautions. At the meeting on November 17, 1969, Sarnoff distributed police code books so that short-wave intercommunications could be monitored. A report was also made by those PAC members who participated in the San Francisco demonstrations two days previously, in which an estimated 150,000 persons marched in the "moratorium parade."

The activities of this Communist-led organization provide a center from which demonstrations are planned and support provided for a select cluster of its affiliates. The propaganda influence of the Peace Action Council is incalculable, as it smoothly coordinates its work with the radical press and with the other Communist fronts that we shall hereinafter describe.

Our collection of propaganda materials distributed at PAC meetings in the name of peace includes copies of the *Vietnam Courier* from Hanoi; materials urging young men to defy the draft; notices of speeches by well-known radical activists, and assorted other materials designed to create disrespect for law and order, for law-enforcement agencies, for the armed forces of the country, and to incite racial minority groups to rebellious action.

Political Affairs is the official monthly publication of the Communist Party of the United States. Writing in the March 1963 issue, Arnold Johnson, heretofore men-

tioned as a co-delegate with Irving Sarnoff at one of the foreign Communist meetings, wrote on page 14:

> ". . . the peace forces must never become isolated from the mass struggles. In this total struggle, there is always a place for Communists."

In the Peace Action Council, a great many Communists have indeed found places, from which they operate a typical, familiar Communist agit-prop (agitation-propaganda) apparatus of great influence.

PEACE ACTION COUNCIL
EXHIBIT I

1926

SOUTHERN CALIFORNIA PEACE CRUSADE

509 No. Western Ave.
Los Angeles 4, Calif.

July 21, 1956

Dear Friend:

This is the last communication from the Southern California Peace Crusade that you will receive. Enclosed is a statement of the Executive Board which officially dissolves the organization.

As a supporter of the Southern California Peace Crusade's program, you can be justifiably proud of its pioneer work for peace and your own share in this effort. For the first time in history popular pressure is recognized as an active factor in determining a nation's foreign policy.

We wish to thank each of you who contributed financially to maintain our organization. Your generous support over the years enabled us to play a pioneering role. We are proud that the history of events has justified our program. We are also proud that this program is now the goal of the majority of our countrymen, and that more and more groups and individuals are working in their own way to achieve its ends.

We do not dissolve our organization in defeat, but in victory. We have no regrets. For the years spent working in the Southern California Peace Crusade were rich and satisfying.

There is no doubt that each of us -- formerly of the Southern California Peace Crusade family -- will continue to work unceasingly to make lasting peace a reality.

Sincerely,

Vicki Landish

Vicki Landish
Former Executive Director

PEACE ACTION COUNCIL
EXHIBIT II

PEACE ACTION COUNCIL

OF SOUTHERN CALIFORNIA
555 No. Western Avenue Room 3 • Los Angeles, California 90004
HOllywood 2-8188

July 15, 1968

Dear Friends:

The visit to Los Angeles of Dave Dellinger, chairman of the National Mobilization Committee to End the War in Vietnam, is an important event for our local anti-war movement. His recent trips to Paris and Hanoi, as well as his outstanding leadership in the National anti-war movement should help all of us in planning for the crucial months ahead. Mr. Dellinger's talk will also deal with some of the recent Vietnam peace proposals of some of the major presidential candidates.

Because of our emergency organizing around the Humphrey visit, it has been very difficult to publicize this event to the fullest extent.

We are therefore appealing to you personally to do all you can to come and to bring as many friends as possible. We hope that you and your organization will phone as many of your activists as you can, so that we may all benefit from Mr. Dellinger's experiences and knowledge.

While the main part of the program will concern the Paris talks, a small part of the evening will be allowed for a report by the Rev. Arthur G. Melville, Roman Catholic priest who was expelled from Guatemala and from the Maryknoll Order there, for participating in the Guatemalan revolutionary movement.

We have taken the liberty of enclosing a few announcemts for your use and remailing. As always, we are depending upon you and your organization for a successful event.

Sincerely,

Irving Sarnoff

Irving Sarnoff, chairman
Peace Action Council of Southern California

IS:ps

PEACE ACTION COUNCIL
EXHIBIT III

Los Angeles Organizing Committee

HEMISPHERE CONFERENCE TO END THE U.S. WAR IN VIETNAM

PEACE ACTION COUNCIL

555 N. Western Ave., Los Angeles, Calif. 90004 / HO 2-8188

October 15, 1968

Dear Peace Worker:

On November 28, 29, 30 and December 1 in Montreal, Canada, the Hemisphere Conference to End the U.S. War in Vietnam will gather. Enclosed is a copy of the call to the Conference. Concerned people from most of the countries of North, Central and South America are responding; preliminary estimates are that more than 2000 participants will work together at the Conference.

The Peace Action Council of Los Angeles has taken on the task of organizing Southern California participation in the Conference, and raising funds for such participation. We believe it vital that all sections of our country be involved in this great Conference, both for the value of the Conference and for the opportunity for all sections of the U.S. peace movement to come together.

A charter flight has been arranged. The flight will leave Los Angeles Wednesday evening, November 27 and will arrive back in Los Angeles early Monday morning. The cost is $150.00 round trip. For those who need it, the Hemisphere Conference Committee will supply food and lodging in Montreal. Because this is a holiday weekend, early confirmation of the flight is necessary. If you are interested in going as an individual or your organization is interested in sending a delegate, please call immediately HO 2-8188.

We urge you to:
1. Fill out and return the enclosed envelope.
2. Discuss the Conference in organizations you are a member of. Speakers are available to bring additional information and to answer questions.
3. Talk to your friends about the conference.
4. Make a contribution to help with Conference expenses. This is urgent!

Los Angeles Organizing Committee
Hemisphere Conference to End the
U.S. War in Vietnam

200
AFL-CIO

PEACE ACTION COUNCIL
EXHIBIT IV

PEACE ACTION COUNCIL

OF SOUTHERN CALIFORNIA
555 No. Western Avenue Room 3 • Los Angeles, California 90004
HOllywood 2-8188

200

Dear friend,

On June 14 over 300 people from So. Calif. met in a conference sponsored by Peace Action Council. It was decided to launch numerous actions including a massive anti-war demonstration at the Nixon Summer White House in San Clemente on Sun., Aug. 17. The conference also decided to show a more active concern for the increased racism, repression and poverty that are the internal counterparts of U.S. foreign policy.

Since that time, PAC and affiliated organization delegates have travelled to the World Peace Assembly in Berlin and the National Anti-War Conference in Cleveland. At both gatherings actions were proposed to make the summer & fall of 1969 a period of renewed activity against the Vietnam War & the racism and repression of American society.

In Chicago on Oct. 11 and Washington on Nov. 15 there will be major national actions with simultaneous demonstrations on the West Coast.

We are convinced that much of the administration's tactics are designed to pacify and quiet the rising anti-war sentiments of the American people. We are convinced that much of the peace talk of the Nixon Administration is disproved by their increased military activity and preparations.

We feel, therefore that it is more important than ever to increase the tempo of our actions to remove all U.S. troops from Vietnam immediately and to change our priorities from those of war to solving the desperate problems of our people.

Your help is sorely needed to make our desire for an increased commitment a reality.

We need funds to help vacationing students reach out to new communities. We need funds to do mailings, advertise, circularize so that thousands never before reached will become involved in the movement to build a better America.

Your contributions have helped build a movement that cannot be ignored; we are confident that with your help the movement will accomplish its goals.

Please contribute as much as you possibly can.

Peace & Love,

Irving Sarnoff

Irving Sarnoff
Chairman--Peace Action Council

P.S. Please take note of the unique event described on the flap of the enclosed remit envelope and also try to fill as many petitions as you can.

THE PEACE AND FREEDOM PARTY

Origin and Early Activities

At the National Conference for New Politics, held in Chicago, August 31–September 1, 1967, among the officials present were Robert Scheer, Tom Hayden, C. Clark Kissinger, of Students for a Democratic Society, Dr. Carlton Goodlett, Stokley Carmichael, Carey McWilliams, Dick Gregory, Don Rothenberg, Mark Comfort, Arnold Johnson (Publicity Director for the Communist Party), H. Rap Brown and James Freeman. The conference coordinator, Michael Wood, stated that Communists were welcome and would provide leadership for the proceedings. The documentation for this information is taken from official papers issued by the National Conference for New Politics, and current newspaper and magazine accounts.

Much of the advance publicity released from the Bay area in California proclaimed that from the conference there would develop a new Peace and Freedom Party—which, indeed, it did. Most of these releases came from the Community for New Politics, and there were similar statements issued from Chicago. The office of the Community For New Politics was at 2214 Grove Street, Berkeley.

The Communist Party of the United States had steadfastly opposed the creation of a third political party, preferring the Left Establishment to operate through one of the two major political organizations that already existed. But although the conference proved a dismal failure—except as a demonstration of Black Power—there were emerging cliques that worked together to create the third party, and in California three spokesmen for the Peace and Freedom Party announced that a drive would be launched to get the Party on the California ballot in 1968 to oppose President Johnson. The spokesmen were Professor Farrel Broslawsky of San Fernando State College, Professor J. B. Nielands of Berkeley, and Robert Avakian, a writer for *Ramparts Magazine.* On

September 17, 1967, approximately 200 people interested in forming the new political organization met at San Luis Obispo to plan strategy, the leaders being Robert Avakian, Al Moreno of the Community for New Politics, and Jack Weinberg, one of the leaders of the Free Speech Movement at Berkeley in 1964.

On December 9, 1967, the *Peoples World,* a Communist newspaper in California, ran a feature article about the Peace and Freedom Party, and the Community for New Politics in Berkeley directed a letter to its members urging them to get behind the movement. Signers of this letter included Professor Broslawsky, Malcolm Burnstein, Barbara Garson, Saul Landau, Robert Scheer, Professor Franz Schurmann, Professor Stephen Smale, Howard Jeter, Jack Weinberg, Robert Avakian and Peter Franck. The San Luis Obispo Convention, which actually launched the Peace and Freedom Party in California, even derived its name from an article that appeared a month earlier in the official publication of the Communist Party. In the August 1967 issue of *Political Affairs,* Gus Hall, national secretary of the American Communist Party wrote:

> "One of the most realistic and promising national movements for mass independent politics is the coalition of independent groupings gathered together under the designation of the National Conference for New Politics.
>
> Thus far it is a coming together of important forces from the Civil Rights Movement, various sections of the Peace Movement, some trade union groups, organizations and leaders in the anti-poverty struggles, student groups, Civil Liberties organizations and some organized farm groups. It is a movement that has attracted forces from both the independent movements of the past and the New Left groups.
>
> The New Politics movement is politically and ideologically, as well as organizationally, independent of the two old parties. In local electoral campaigns, it has supported candidates running through the apparatus of the two-party system, as well as candidates running as independents. But it is truly independent of the two-party system, the question of

how it runs candidates for political office becomes secondary.

This is a young movement with tremendous potential. It opens up the avenue for a political alliance of the different mass dreams of struggle, a path that can lead away from separate, fragmented and isolated political movements. It is a movement engaged both in expressing an electoral protest and seeking electoral victories. It has the potential of becoming a winning coalition of electoral forces." (*Political Affairs,* August, 1967, page 6).

Mr. Hall exhibited Marxian omniscience when he wrote on the following page of *Political Affairs* that "Whether there will be a Peace and Freedom Presidential ticket in 1968 will be decided within the coming months. The recently held meeting of the National Committee of the Communist Party, U.S.A., states some of the tasks in the following words: 'In our opinion the fight in the Democratic Party is very important, but not because we believe it can be taken away from the machine that controls it nationally. It is important to the extent that it enfolds a mass struggle against the Johnson Administration and does grab areas of control away from the machine, thus enabling certain more progressive candidates to emerge. ****this is why an independent ticket is the most important weapon even influencing developments in the two major parties themselves.' "

We discussed the Community for New Politics in our 1967 Report, commencing at page 97. Since it was the forerunner of the Peace and Freedom Party, it may be helpful for us to give a brief résumé of the Community for New Politics, the Committee for New Politics, and how these movements provided the background for the organization we are now discussing.

Robert Scheer has been a radical activist for several years. He was a member of SLATE, Berkeley campus radical student organization with a strong Marxian orientation, and thereafter was a campus leader of the Fair Play for Cuba Committee, which was controlled by the Communist apparatus. He has travelled to Hanoi and elsewhere in Southeast Asia and has spoken and written about his experiences. On August 17, 1965 he was featured in an anti-Vietnam war demonstration at Lake

Merritt Park, Oakland. Congressman Jeffrey Cohelan, liberal California Democrat, had been asked to participate but declined because although he was opposed to the continued bombing of North Vietnam, he was in accord with President Johnson's position regarding the war in general. The Radical Left became enraged because Cohelan declined their invitation, and decided to run Scheer against him in the next election.

Scheer's most prominent and active supporters included Jerry Rubin, one of the defendants at the recent Chicago trial; Carl Bloice, Communist reporter for the *Peoples World;* Roscoe Proctor, National Communist Party Functionary from Berkeley; Steve Weismann, a Free Speech Movement leader, and Robert Avakian, a Maoist Communist. (*National Review,* Dec. 14, 1965, pages 1157–1159; *S. F. Chronicle,* Jan. 15, 1966; *S. F. Examiner,* Jan. 20, 1966; *S. F. Chronicle,* Feb. 2, 1966; *Scheer Campaign Documents,* Jan., 1966; *Oakland Tribune,* April 14, 1966 and May 10, 1966.)

Following its 1967 convention at San Luis Obispo, the newly created political organization launched a massive campaign to register enough voters to qualify for the coming elections. Jack Weinberg was statewide coordinator, and a Free Speech Movement leader at Berkeley in 1964. In California this required a registration of 67,000 people by January 1, 1968. Most of the radical activists rallied to this political effort, as they had done to the Independent Progressive Party twenty years before. Indeed, the two political organizations were strikingly similar in most respects except their names. But there was one important distinction. Hugh Bryson, a Communist, headed the Independent Progressive Party and it was always under tight Communist control in California. The Peace and Freedom Party, on the other hand, was dominated by leaders from several Communist and Marxist groups. As Professor Farrel Broslawsky wrote:

> "Active support for the Peace and Freedom Party cuts across sectarian lines and tactical divisions. Radical political militants supporting the Party, include Bob Avakian, Mike Hannon, Paul Jacobs, Mal Burnstein, Jack Weinberg, and Robert Scheer. To date, the Peace and Freedom Party has provided a focal point for electoral activity on the part of radicals,

intellectuals, discontented middle-class individuals and anti-war activists." (*Claremont Courier,* Nov. 29, 1967).

Professor Broslawsky, in his description of the Peace and Freedom Party, could have been referring equally well and with equal accuracy to the Independent Progressive Party of the late '40's. In each instance there was firm control at the top by subversive elements; in each instance there were many rank and file adherents who were dissatisfied with the two major political parties and had no idea of how the third party was structured or controlled, and were in no sense subversive. And, as was true in the Independent Progressive Party, the Peace and Freedom Party also lost a great many of its members when the true facts concerning the nature of the organization and its controlling factions became known. Once the drive for signatures was under way, offices were established throughout the state. Circulators of petitions were recruited, lines of communication were opened, and in southern California a headquarters was located at 4467 West Pico Boulevard, Los Angeles, 90019, to correlate activities with the northern California offices. Even the Socialist Workers Party, those Trotskyist Communists who usually remain aloof from allowing members to run on their political tickets, now freely consented to participate with the new third party organization. Even the *Peoples World,* that had remained hostile to the concept of a third party until the word came down from on high that the General Secretary, Gus Hall, had approved, now printed its consent and best wishes from such important members in the Northern California Division as Albert Lima, Bettina Aptheker and Roscoe Proctor, the three declaring that "There is a determined radical wing within the powerful Peace Movement in this country." (*Peoples World,* Jan. 13, 1968; *Oakland Tribune,* Jan. 13, 1968).

The Community for New Politics was officially dissolved in February, 1968 and its members urged to become active in the new Peace and Freedom Party. (*Peoples World,* Feb. 17, 1968, page 3.) As the organization proceeded, the fledgling third party wasted little time in demonstrating how different it was from the two major politi-

cal parties. In the Bay area it demonstrated against Secretary of State Dean Rusk when he spoke at the Fairmont Hotel in San Francisco in the evening of January 11 1968. In concert with the Stop the Draft Committee and the Berkeley Campus Mobilization Committee, this affair was organized at Berkeley and several hundred participants hurled bottles and rocks at police at the San Francisco hotel. Fifty-two were arrested, and immediately their supporters raised the familiar accusation of police brutality. (*Daily Californian,* Berkeley, Jan. 12, 1968; *Oakland Tribune,* Jan. 12, 1968.) In January the Peace and Freedom Party joined in a demonstration at San Quentin Penitentiary urging the inmates to strike on February 15, 1968. (*Berkeley Barb,* Feb. 9, 15, 1968.)

Coalition With Black Panther Party

As shown by an exhibit that is reproduced at the conclusion of this section, there was early cooperation between the Peace and Freedom Party and the Black Panther Party. This exhibit provides an illustration of the propaganda generated by some of these organizations in an attempt to break down respect for constituted authority, and to imbue minority groups with hatred against law enforcement agencies. The handbill read, in part:

> "The Los Angeles police, like the police of other large cities, are brutal, arrogant and insulting toward all people in the Black and Brown communities. But their most savage attacks are directed against the militant organizations through which oppressed minority people fight for freedom. It is the clear and unmistakable policy of the police department, serving the same functions as did the Nazi Gestapo to crush all organizations which threatened the rule of the racist power structure."

John Haag soon emerged as the leader of the southern California Peace and Freedom Party, and eventually, with Mike Schon, became a co-chairman of the state organization. A graduate of an Eastern University, Haag lived at Venice where he operated a coffee house that was a gathering place for radicals, and he also headed the youth adjunct of the Communist Party in the Los Angeles area, the DuBois Clubs of America. By March

1968, the PFP was publishing a paper called the *Agitator*. Issue No. 2, dated March 10, 1968, stated that it was "Designed to promote radical thought, discussion and action within the Movement." On page 8 it declared that "the Black Panther Party for self-defense is in desperate need of money for Huey Newton's defense, for legal defense of other members who are being harassed by the law, and for their main job: organizing and defending the ghetto."

This liaison between Panthers and the third party was becoming more firm; and it was also one of the reasons that contributed to the shrinking numbers in the Peace and Freedom Party, due to defections when the nature of its control and its cooperation with the Panthers seeped down through its mass membership. As we have stated, these Communist-operated third parties attracted many liberals who were not willing to continue in either of the other two parties, and therefore quickly registered in the newly-created third party organization. But in southern California, the slates of sponsors were soon announced and among them were well-known Communist Party members, such as Hursel Alexander and Frank Pestana, as well as Mario Savio, the leader of the Berkeley rebellion. And when the cooperation with Panthers became more widely known, the defections increased accordingly.

Peace and Freedom Party Qualifies for Ballot

The Peace and Freedom Party's own figures in the various California counties that enabled it to qualify for the ballot, were as follows: Alameda, 12,886; Amador, 1; Butte, 84; Calaveras, 1; Contra Costa, 1,219; Del Norte, 0; El Dorado, 5; Fresno, 141; Glenn, 0; Humboldt, 286; Imperial, 9; Inyo, 1; Kern, 90; Kings, 3; Lake, 6; Lassen, 3; Los Angeles, 25,928; Madera, 2; Marin, 1,869; Mariposa, 1; Mendocino, 70; Merced, 3; Mono, 4; Monterey, 260; Napa, 1; Nevada, 1; Orange, 1,084; Placer, 31; Plumas, 2; Riverside, 542; Sacramento, 617; San Benito, 1; San Bernardino, 296; San Diego, 4,948; San Francisco, 14,610; San Joaquin, 41; San Luis Obispo, 60; San Mateo, 1,677; Santa Barbara, 771; Santa Clara, 1,791; Santa Cruz, 920; Shasta, 6; Siskiyou, 2; Solano, 153; Sonoma, 654; Stanislaus, 43; Sutter, 1; Tehama, 2; Trinity,

1; Tulare, 19; Tuolumne, 4; Ventura, 180; Yolo, 173, Yuba, 6. These were the registrations reported by the County Representatives to the Headquarters of the Peace and Freedom Party, as of April 11, 1968. A few days thereafter, the state steering committee convened at 55 Colton Street, San Francisco. Among those present were Hugh Manes, Jack Weinberg, and Peter Franck. Manes acted as chairman for the first session and it was decided to add Eldridge Cleaver, Black Panther leader, as a member of the steering committee, and also to form a working coalition with the Black Panther Party. (Minutes, Steering Committee meeting April 13 and 14, 1968.)

The Peace and Freedom Party provided yet another rallying medium for radical groups throughout the state. At a meeting of the Progressive Labor Party, which follows the ideology of the Red Chinese Communists, at 1617 East Palmer Street, Los Angeles, on April 10, 1968, it was announced that there would be a caravan departing for San Francisco on April 18 to participate in a demonstration for the Panthers in Oakland, and that the Peace and Freedom Party would also send personnel. Thus the description by Professor Broslawsky to the effect that the new third party would include a broad variety of radicals was proving eminently accurate. There were Black Panthers, Trotskyist Communists, Maoist Communists, DuBois Club members, Progressive Labor Party members who also followed the ideology of Red China, and members from the Dow Action Committee, the Peace Action Council and various other fronts and peripheral groups that were banding together in a united front type of demonstrations and protests of various kinds.

A specific example is found in the gathering on Saturday, April 20 1968, at the southwest corner of Willow Street and Long Beach Boulevard in Long Beach. The rally was called, "A campus-community solidarity march against the Vietnam war and White racism." Participating were the following organizations: Los Angeles Veterans for Peace in Vietnam, Long Beach Citizens for Peace, Students for a Democratic Society, Long Beach State College Faculty Peace Committee, Independent High School Students SDS, Long Beach Womens International Strike for Peace, Peace and Freedom Party

Clubs, Dow Action Committee, and Peace Action Council. The parade proceeded along the sidewalk, down Long Beach Boulevard, turned west on Pine Street, and stopped at a small park, where speakers addressed the crowd of several hundred.

By May 1968, the Press carried articles describing the shrinking of the ranks of the Peace and Freedom Party. The *Los Angeles Times,* May 3 1968, stated:

> ". . . defections have averaged about 10,000 a month since the Party qualified for the ballot, and indications were that the Party's 105,000 voters would be reduced to about 60,000, when all registrations are tabulated.
>
> In San Diego officials said 30% of the Party's 4,948 members had registered with other Parties. Los Angeles was down about the same percentage from 36,788, Alameda 38% from 20,000, and San Francisco down about 50% from 19,347.
>
> Many observers attributed the defections to the emergence of 'peace candidates' in the established parties and to the PFP's alignment with the militant Black Panther group."

The Candidates

Although the Socialist Workers' Party, Trotskyist Communist group, collaborated with the Peace and Freedom Party, it ultimately decided to follow its usual procedure in running its own candidates for public office. Peace and Freedom Party attempted to run Eldridge Cleaver as its candidate for President of the United States, but shortly after the announcement was made, an inquiry was received from the California Attorney General's office inquiring whether or not Cleaver was eligible from the standpoint of age. A quick search disclosed that he was two years shy of the requisite 35 year age required by the United States Constitution. The Secretary of State, upon receiving evidence of this fact, refused to allow Cleaver's name to appear on the ballot. A petition was immediately filed with the California State Supreme Court, and was promptly denied, a serious blow to the Peace and Freedom Party's campaign.

Other well-known candidates included Ben Dobbs, a frequent patron of Communist Front organizations, and a Communist Party member for more than 30 years. He was a candidate for election to the United States House of Representatives from the 17th Congressional District in California. His boastful declaration of Party membership was an indication of the new technique currently in use by Communists who are fairly well known as such, to openly admit their membership and endeavor to make the Communist Party and its members respectable in the eyes of the American people. To some extent this technique has succeeded; not because the threat of Communism is decreasing—quite the contrary—but rather because of the astounding apathy that pervades our thinking and because people are peculiarly susceptible to this type of propaganda.

John Haag was a candidate for election to the California State Senate from the 25th Senatorial District; Sherman Pearl ran for Congress from the 28th Congressional District; Jack Weinberg ran for Congress from the 26th Congressional District, and Hugh Manes from the 22nd Congressional District. Paul Jacobs was the candidate for United States Senator from California, and we have alluded to him in previous reports. He was formerly an organizer for the Socialist Workers Party, and is presently a consultant to the Center for the Study of Democratic Institutions at Pasadena. This organization, formerly known as the Fund for the Republic, recently went through a drastic reorganization, during which several of the original officers were discharged from their positions. Since its original grant from the Ford Foundation has been used up, the Center now spends a great deal of its time soliciting funds from private sources in order that it may continue to operate. The Jacobs campaign was vigorously conducted, especially in the southern part of the state, but the entire Peace and Freedom Party suffered from lack of funds and a dearth of trained political workers.

Headquarters Moved to Pink House

In July, 1968 the Peace and Freedom Party headquarters in southern California was moved to the so-called

"Pink House" at 619 Bonnie Brae, Los Angeles. This is a two-storied, pink and white colonial structure, in which the Dow Action Committee and the Liberation News Service had their offices. The decision to move was made at the PFP Council meeting held at 544 North Western Avenue on June 23, 1968. (Peace and Freedom Party *Broadside,* July 2, 1968, page 2.)

At the September 30, 1968, PFP Council meeting in the new offices, the minutes stated that: "Discussion: Is Cleaver reaching the people as a Presidential candidate? Result: Cleaver makes impact on people; they are getting educated whether or not they realize P and F is behind that education."

And at the Council meeting on October 14 1968, the minutes stated that: "Milt Zaslow reported on the progress being made toward launching a National Defense Committee. The Black Panther Party is cooperating fully, the initial sponsoring Committee has representatives from the Black Panthers, Peace and Freedom, PAC (Peace Action Council), Los Angeles Committee for Defense of the Bill of Rights (headed by Communist Rose Chernin), the Communist Party, and the Socialist Workers Party."

Trouble at the Pink House

It was inevitable that with so many similar organizations occupying offices in the same building and presumably sharing expenses, that trouble would result. It did result, according to a letter addressed to the Peace and Freedom Party, dated November 11, 1968, and signed by Dow Action Committee, Veterans for Peace in Vietnam, and GI's and Vietnam Veterans Against the War. On the following day, the PFP Steering Committee responded with a letter referring to the other groups as: "Our tenants" and claiming "priority" in the premises. This attitude widened the breach, and the friction persisted until the Peace and Freedom Party vacated the Pink House headquarters by simply abandoning the office and much of its contents in January 1969.

Southern California Clubs

By the end of 1968 there were 36 active Peace and Freedom Party Clubs functioning in the Los Angeles area. We list them here with their addresses in order to show the extent of the influence each of these organizations exerted. They were:

Beverly Hills, 10334 Wilkins Street, LA 90024;
Cal State, 5424 Dobbs Street, LA 90032;
Canoga Park-Chatsworth, 19853 Dermit Street, Canoga Park;
East Los Angeles, 216 South Soto Street, LA 90033;
East Valley Chapter, 13107 Margate Street, North Hollywood;
Echo Park-Silver Lake, 1448 Ridgeway, LA 90026;
Encino Club, 17261 Oakview Drive, Encino;
Foothill, 10259 Helendale Avenue, Tujunga;
Forum Club, c/o Box 77-145 LA 90007, Meetings at MacArthur Park;
Granada Hills, 11013 Woodley Street, Granada Hills, 91344;
Health Sciences, 1530 South Monterey Street, Alhambra;
Hermosa Beach Club, Hermosa Beach;
Hollywood Hills Club, 2401 Beachwood Street, Hollywood;
Hughes Aircraft Club, 4717 Vender Hill, Torrance;
Inner Hollywood, 6141¼ Romaine Street, LA 90038;
Long Beach Club, 362 East Louise Street, Long Beach
Los Feliz Club, 8030½ West Third Street, LA 90048
Manhattan Beach Club, 598 29th Street, Manhattan Beach, 90266;
Northeast Area, 356 West Avenue 43, LA 90065;
North Hollywood, 6930 Fulton Avenue, North Hollywood, 91605;
North Hollywood No. 2, 4633 Willowcrest, North Hollywood;
Orange County, 6442 Larkspur Street, Huntington Beach, 92047;
Ocean Park, 247 Bicknell Street, Santa Monica, 90405;
Olympic-Fairfax Club, 6248 Warner Street, Los Angeles;

Pasadena-Altadena, 167 North Orange Grove Blvd., Pasadena, 91103;
Pico-Crenshaw, 5130 Chesley Street, Los Angeles, 90043;
Pancho Villa Club, 20331 Mobile Street, Canoga Park;
Pomona Valley, 636 Hendix Street, Claremont;
Reseda Club, 7300 Wilbur Street, Reseda;
Santa Anita, 3022 Ninth Avenue, Arcadia;
Santa Monica High School Club, 722 Adelaide Place, Santa Monica, 90402;
Sherman Oaks, 3945 Sunny Oaks Road, Sherman Oaks, 91403;
South Pasadena-San Marino, 1885 Petersen Avenue, South Pasadena;
Topanga Club, 20774 Hillside Drive, Topanga, 90290;
Venice Club, 1727 West Washington Boulevard, Venice, 90291;
West Los Angeles Club, 426½ Veteran Avenue, Los Angeles 20024;
West Los Angeles Central, 2687 Veteran Avenue, LA 90064;
Wilshire-Westlake, 1094 West 31st Street, Los Angeles.

There was also a Peace and Freedom Communications Center, which was situated at 700 Greentree Drive, Pacific Palisades. After vacating its quarters at the Pink House in January, the Peace and Freedom Party remained virtually dormant as a political organization during 1969. It nevertheless continued its participations and demonstrations and marches from time to time, and held occasional meetings in order to keep up the interest of members and to perpetuate the Club organization. Ordinarily these meetings were held at the offices of the Peace Action Council, 555 North Western Avenue. Such a meeting was held on April 5, 1969, at which the matter of defense against police and also extreme rightist organizations was discussed. About 34 people attended this meeting and it was reported by Leo Fromkin that the Socialist Workers Party had agreed to provide 33 members for defense purposes, the young Socialist Alliance 17, the Communist

Party 10, Socialist Workers for Peace 10, Peace and Freedom Party 20, Youth Educational Defense Committee 25, and that this force would be divided into 5-man teams. Mike McCabe, representing the Socialist Workers Party, stated he had received a report from an informant to the effect that a motorcycle gang would try to disrupt a march scheduled for April 6.

This affair was sponsored by GI's Against War, Vietnam Veterans Against War and the Student Mobilization Committee. It was held in MacArthur Park at noon, and McCabe's informant proved correct, as members of an organization known as the Iron Cross Motorcycle Club caused minor disturbances, as did some members of the American Nazi Party, and a few anti-Communist Cuban exiles. But the Los Angeles Police Department, rather than the Security Squads, handled the trouble. And as long as they were protecting the demonstrators, they were not called pigs and accused of police brutality, these terms being ordinarily applied when the police protect the public against the demonstrators. At this affair Irving Sarnoff read a message by the North Vietnamese Communists from Hanoi; there was a speech by a Black Panther, four demonstrators were arrested, and Rose Chernin set about providing bail. We cite this to illustrate that the Peace and Freedom Party engaged in other activities besides running candidates for public office.

Skeleton Organization Maintained

In interviews with newspaper reporters recently, official spokesmen for the Peace and Freedom Party have indicated that they will maintain their organization for the purpose of running candidates for elective offices during the coming campaigns. Thus the *Los Angeles Times* for February 13, 1970 stated:

> "Because they want to stay alive politically and because they don't like what the other parties are doing, Peace and Freedom Party leaders have decided to enter candidates for statewide offices this year. And the way things stand now, two PFP organizers will lead the lists. Charles T. Webber, of Long Beach,

a 29 year old Party recruiter, will run for Governor. John Haag of Venice, also a Party organizer, who is now a state co-chairman for PFP, will run for U. S. Senator. Other members will run for lesser statewide offices. Some will seek Congressional and State Legislative posts. The candidates lots (sic) will be filled and a Party platform drafted at a PFP Statewide Convention next week at Cal State, Long Beach.

The Party acquired legal status in 1968 at the same time the American Independent Party qualified for the California ballot. Both of the new parties were born mainly out of frustration with the two major parties—Republican and Democratic. PFP members were disenchanted with the Vietnam War Policy and AIP members were backing the conservative views of former Alabama Gov. George C. Wallace.

Webber said Republican Gov. Reagan and his prospective Democratic challenger, Assembly Minority Leader Jesse Unruh of Inglewood, are 'totally inacceptable' to most PFP members and voters 'must be given an alternative.'

But things are a bit different in the Senate race. Republican incumbent George Murphy is a total anathema to PFP members, but Rep. George Brown, Jr., (D-Monterey Park), one of his prospective challengers, is something else again, Haag said.

'Brown is a candidate who would be acceptable to many PFP members if he were our candidate,' he said. 'His views of the Vietnam War are very close to ours. But he is seeking the nomination of a Party (Democratic) hostile to his position. And I don't really expect him to win the primary.'

Thus, if Brown fails to make the general election ballot, peace-minded voters would have an alternative to Murphy in the PFP candidate—himself, Haag explained.

'But if Brown should become the Democratic nominee, then I would spend my time trying to build our party.'

To stay alive as a legal Party qualified for the California ballot, a PFP candidate in the statewide

race must garner at least 2% of the total vote cast in the race. That could mean that Webber or Haag, or whomever is the PFP nominee in either race, would have to get 120,000 or more votes in the general election. One of the problems the Party encounters in fielding a slate of candidates is filing fees, which Haag and Webber believe are excessive and which may be challenged in a test suit here."

Benefits From Third Party Political Efforts

We have described the creation and activities of the Independent Progressive Party, which also endeavored to run candidates for public office almost twenty years ago. That organization was also run by members of the Communist Party, and it failed miserably so far as the polls were concerned. The Peace and Freedom Party, split into many component groups, many of them with divergent ideological beliefs, made an even worse showing. Why, then, do these third party political movements persist in their futile efforts, and why do the Communist Party, the Socialist Party and the Socialist Workers' Party persist in running their own candidates for public office year after year?

In 1932 and 1934 the Communist Party engaged in a vigorous campaign for the purpose of collecting enough signatures on petitions to qualify its candidates for California elections. The effort failed, but the result was that the Party secured thousands of names of liberals who were willing to assist the Communist Party in its political efforts. This provided a compendium of contacts that was invaluable, and it also provided an activity in which a great many people could be interested in working and organizing and propagandizing through a medium that otherwise would not be available. The Independent Progressive Party engaged in much the same sort of activity, and the Socialist Workers Party and other minority radical movements use the political device for the purpose of issuing leaflets and pamphlets and having candidates speak at public meetings, raising funds and generally stimulating their respective organizations.

The Peace and Freedom Party, as we have seen, also reaps this sort of political harvest from its activities. It

may be assumed that none of its candidates actually expected to be elected to the offices for which they campaigned, but they did speak at numerous meetings, the organization did raise funds, it did create an organization, it made innumerable contacts and established a great many clubs, it collected thousands of names on petitions and received donations from thousands of contributors. It also participated in many demonstrations, a few of which we have described because we consider them of particiular significance. The rest were covered by the news media and it would serve no useful purpose to describe them again here.

As this portion of the report is being written, we have received information concerning the efforts of some of the Peace and Freedom Clubs that are situated near high schools to organize similar clubs among high school students, and although the parent organization has become relatively inactive, many of the clubs are flourishing and exerting considerable influence in their respective areas.

PEACE AND FREEDOM PARTY
EXHIBIT I

PEACE AND FREEDOM PARTY

WANTED

BY THE PEOPLE OF THE BEACH COMMUNITIES

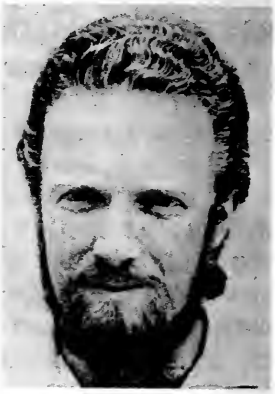
for CONSPIRACY to stop the talking and withdraw U.S. forces from Vietnam,
to end the draft, release political prisoners,
to abolish political police, dismantle the war machine;
for ADVOCATING community control of community affairs,
self-government for racial and cultural minorities,
neighborhood control of police, schools and parks,
adequate food, housing, medical care & education for all,
legal marijuana & abortion, voting at age 18,
low-cost public transportation instead of freeways;
for AIDING and ABETTING the organization of farm workers, public employees,
military personnel, the unemployed & the poor;
for ASSAULT against the power structure and its two-party machine.

Sherman Pearl

CANDIDATE FOR CONGRESS
in the 28th District
former writer, publicist

John Haag

CANDIDATE FOR STATE
SENATE, 25th District
former coffee house
operator, organizer
and poet



Bob Niemann

CANDIDATE FOR STATE
ASSEMBLY, 60th District
former college professor
and engineer

PAUL JACOBS - CANDIDATE FOR U.S. SENATE
ELDRIDGE CLEAVER - CANDIDATE FOR PRESIDENT

PEACE AND FREEDOM PARTY

BEACHHEAD CAMPAIGN OFFICE
1727 W. Washington Blvd.
Venice, California 90291
399-7681
noon to midnight

Malibu 456-8471
Ocean Park 392-2010
Santa Monica 451-9320
South Bay 379-8175
West L.A. 478-9509

Labor donated

PEACE AND FREEDOM PARTY
EXHIBIT II

PEACE AND FREEDOM PARTY
EXHIBIT III

1931

Bulletin Of The CENTRAL COMMITTEE OF CORRESPONDENCE

Volume II, Number 2, August 1968 P.O. Box 307, Pennington, N.J. 08534

MOBILIZATION SET FOR CHICAGO

Over 50,000 To Be In Mass Action

NEW YORK, July 25, 1968.

The National Mobilization Committee To End The War In Vietnam, which sponsored the famous April 15 and October 21 demonstrations, has called for massive demonstrations at the Democratic Party Convention in Chicago, Tuesday and Wednesday August 27 and 28. The actions will be oriented to issues, not candidates. Simply stated, these issues are American withdrawal from Vietnam, and an end to repression in the ghettos.

Tom Hayden and Rennie Davis are leading a team of 25 full-time volunteers in Chicago, who are arranging housing for 50,000 visitors. Plans are also being made for legal and medical teams, and possibly a daily newspaper for the week of the convention. August 28th is the day of the actual nomination; the 27th is LBJ's birthday.

While the mass protests will take place on Tuesday and Wednesday, smaller actions are scheduled to begin the previous week. These will consist of "street theater, rock music, mobile sound trucks, pickets, sit-ins and so on, and will be led by seasoned demonstration leaders," according to Tom Hayden. The National Mobilization Committee is setting up "affinity centers" in Chicago, for participants to meet and plan decentralized actions. Visitors to Chicago will receive a "demonstrator's guide" to the city.

Numbers to call for those who wish to help organize:

New York City:..... 212-964-6436
Chicago Mobilization:..... 312-939-2666
Los Angeles: Contact Don Kalish, Dept. of Philosophy, Univ. of Calif., LA, Calif. 90024.

According to the National Mobilization Committee, "Chicago in August will be crucial to America. . . . It will be better for the United States to get out of Vietnam than face the anti-war movement!"

The Coalition for an Open Convention, more oriented towards working within the Democratic Party, has also called for a demonstration in Chicago, and has chartered buses from the New York City area. The price is $34 round trip from New York, and housing is free. Dates: August 26-29. (Bus tickets must be paid for by August 15.)

Information and bus tickets:

New York SANE, 124 E 40 St, Rm 203; 212-867-6554/867-6248
Coalition for an Open Convention, 189 Sunrise Highway, Rockville Center, L.I. 516-536-5811

PFP To Hold Convention

SAN FRANCISCO, July 27, 1968 (special to the Central Committee Of Correspondence).

The Peace And Freedom Party (PFP), which astounded analysts in California by registering 105,000 voters, has set its National Convention for August 17 and 18, according to Rick Hyland, San Francisco area party coordinator. The convention will be held at the University of Mich-

(continued next page)

PEACE AND FREEDOM PARTY
EXHIBIT III—Continued

(PFP National Convention, continued)

igan in Ann Arbor. Delegations from 27 states will meet to agree on candidates for president and vice-president. The potential nominees with the most support are Eldridge Cleaver, writer and journalist (see book review this page), and Dick Gregory, the comedian known for his dedicated role in anti-war and open housing demonstrations.

The PFP national ticket will be on the ballot in at least 19 states. The party represents not only an attempt to influence the 1968 election, but an effort to build a durable, grass-roots, radical political party in America. The PFP is also one of the most successful working coalitions between radical blacks and whites. The Black Panther Party, of which Eldridge Cleaver is the Minister Of Information, has been a major source of its strength.

As of this writing, the states which will carry the Peace And Freedom slate are California, Colorado, Connecticut, Hawaii, Iowa, Michigan, Minnesota, Nebraska, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. The other delegations to the convention will represent Arizona, District of Columbia, Illinois, Indiana, Kentucky, Massachusetts, Ohio, and West Virginia.

Books: SOUL ON ICE, by Eldridge Cleaver, McGraw-Hill, NY, 1968. A Ramparts Book.

It is inevitable that one compare Eldridge Cleaver to Malcolm--both spent much of their youth in prison, where both long adhered to and finally rejected Elijah Muhammad's brand of Islam; both emerged from prison with "self-educations" that have enabled them to attract large followings among college students and intellectuals. On a deeper level, they both showed an awareness--and resentment--of the power of the White Woman on their psyches. And both have evinced that great store of humanity which a sensitive black American must require to put aside devil-imagery, and recognize his white tormentors as fellow victims of an inhuman, mechanized and sick system.

It is Cleaver's humanity which is the most attractive attribute of Soul On Ice. After showering epithets on "ofays," he admits that he didn't mean to hurt: "I did it primarily to relieve a certain pressure on my brain." Although the more political chapters are phrased with firmness, there is the hint over it all (as in the chapter "The Allegory of the Black Eunuchs") of the final uncertainty of the sensitive man.

The book is a collection of essays and letters written during the nine years the author spent in California prisons for raping a white woman. Many readers will be startled to discover in the early chapters of the book that Cleaver and his fellow-convicts thought of their "crimes" as insurrectionary acts, and of themselves as prisoners of war. Later chapters discuss politics, and contain an analysis of America's racial situation via sexual prototypes.

But white radicals will gain less from the book's politics, than from the rare insights into a black brother's mind. They will find that, as Mr. Cleaver has said of others, "respect commands itself." --A.D.

PEACE MAILING LIST
TO SHIFT FOCUS

The Central Committee Of Correspondence, which publishes the national mailing list of anti-war organizations, plans to change the emphasis of its next edition. As opposition to the Vietnam War has grown, the list has become unwieldy, while groups which deal mainly with other issues --such as black liberation--have been omitted.

Therefore the next edition will be moved somewhat to the left, and the list will be re-titled, "Organizations In The Movement." The Central Committee Of Correspondence anticipates a smaller list which deals with wider issues.

All groups will continue to be listed on request.

Mailing lists of organizations and publications opposing the war in Vietnam are available on GUMMED PAPER, ready to cut up and stick onto envelopes. The cost is only $2/copy, 3 for $5, which is the cost of production. Write the Central Committee Of Correspondence. Suggestions: (1) Use the list selectively. Use it for regional mailings; or mail to publications only, draft groups only, McCarthy Democrats only, depending on your purpose. (2) The list has been used successfully to announce major demonstrations, conventions, political organizing campaigns, new books, etc. It is not a good list for fund appeals. (3) Canadian and other contacts abroad have been selected for their potential usefulness to draft counsellors and emigrants. (4) Take the list with you when you travel. Make friends in other cities.

PRINTING: Want specifications for a small printing operation ($400 total investment)? For complete details on how to set up a complete system utilizing a re-built Multilith 80, write to Printing, % Central Committee Of Correspondence, PO Box 307, Pennington, NJ 08534.

PEACE AND FREEDOM PARTY
EXHIBIT IV

DEFEND THE BLACK PANTHER PARTY AGAINST RACIST POLICE

The Los Angeles Police, like the police of other large cities, are brutal, arrogant and insulting toward all people in the Black and Brown communities. But their most savage attacks are directed against the militant organizations through which oppressed minority people fight for freedom. It is the clear and unmistakable policy of the police department, serving the same function as did the Nazi Gestapo, to crush all organizations which threaten the rule of the racist power structure.

In recent months, the LAPD, along with the police departments of Oakland, Seattle, and other cities has singled out the Black Panthers for an especially ruthless campaign of harassment, frame-ups, and murder. Its aim is nothing less than the liquidation of this young, dynamic, revolutionary political movement before it can gain a solid foothold in the Black communities.

The LAPD has been systematically harassing members of the Black Panther Party with the specific intention of provoking incidents. On August 5, they succeeded. On that day, two officers followed and confronted a car in which three Black Panther members were riding. In the incident that followed, the three Black Panther Party members were killed. Two days later, eight Panthers were arrested; three days later, four more Panthers were arrested-- all on trumped up charges. Though nothing can be done to restore life to the three young men who were murdered, the police practices which led to their deaths must be stopped!

We demand that Chief Reddin immediately circulate a memorandum to all his men containing the following points:

1. Lists of Black Panther Party members' names, pictures and automobile licenses shall no longer be circulated.
2. The practices of following and stopping the cars of Black Panther Party members shall immediately and permanently be discontinued.
3. The practice of harassing, accosting and rousting Black Panther Party members shall be prohibited.
4. Surveillance of Black Panther Party headquarters and the intimidation of their landlord and neighbors must be discontinued.

We further demand that all police assigned to the Black and Brown communities be immediately disarmed -- because the ready use of guns by police has been one of the prime causes of violence in the ghettos.

These are only emergency measures. The problem will not be solved until the police are completely withdrawn from the ghettos and replaced by a new force consisting of men who live in the communities they patrol, and directly responsible to members of that community!

DEFEND THE RIGHT OF THE BLACK PANTHERS TO LIVE, TO ORGANIZE, AND TO FIGHT FOR BLACK LIBERATION. ALL POWER TO THE PEOPLE; BLACK POWER TO BLACK PEOPLE.

Los Angeles County Peace and Freedom Movement 484 - 1422

PEACE AND FREEDOM PARTY
EXHIBIT IV—Continued

THE BLACK PANTHER PARTY TEN POINT PROGRAM

1. We want freedom. We want power to determine the destiny of our Black Community.

2. We want full employment for our people.

3. We want an end to the robbery by the white man of our Black Community.

4. We want decent housing, fit for shelter of human beings.

5. We want education for our people that exposes the true nature of this decadent American society. We want education that teaches us our true history and our role in the present day society.

6. We want all Black men to be exempt from military service.

7. We want an immediate end to POLICE BRUTALITY and MURDER of Black people.

8. We want freedom for all Black men held in federal, state, county and city prisons and jails.

9. We want all Black people when brought to trial to be tried in court by a jury of their peer group or people from their Black Communities, as defined by the Constitution of the United States.

10. We want land, bread, housing, education, clothing, justice and peace.

COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS

This is one of the oldest, most effective of all the Communist fronts. It has had the same executive director for the past thirty years, Rose Chernin Kusnitz, and its purpose has always been to provide legal aid and bail for those radicals who have become embroiled with the law. Like all other Communist-dominated organizations, it utilizes the courts, the immigration and naturalization service, and other official tribunals as forums through which to scatter propaganda and defiance; it maintains a close collaboration with other fronts, and it has become so extremely well known because of its longevity and militancy that it scarcely makes any effort to conceal its Communist nature.

Rose Chernin Kusnitz was born Rachmiel Czermin on September 14, 1902, in Gashniky, Russia. She was naturalized in New York City on February 15, 1929. Identified by sworn testimony as a member of the Communist Party, Mrs. Kusnitz' sole activity, aside from participating in the activities of other front organizations, such as the Dow Action Committee, the Peace Action Council, the Peace and Freedom Party, and the other Communist fronts that we shall hereafter describe, has been the Committee for Defense of the Bill of Rights. (*House Committee Report,* April 3, 1959, page 44.)

Because of its special functions, this front deserves particular attention. It recently changed its name, theretofore having been known as the Los Angeles Committee for Protection of the Foreign Born. We have briefly discussed it in previous reports, and from them we have condensed the following history of the organization and some of its sponsors and officers. Executive Director Kusnitz was, of course, also the director of the organization when it went by its former name. And, indeed, the front is precisely the same so far as its objectives and activities and its basic personnel are concerned. It has remained at the offices which it has occupied for many years at 326 West Third Street, Los Angeles, and Mrs. Kusnitz was

recently elected a member of the District Committee, Southern District, Communist Party of California.

The world Communist movement has always had organizations to render legal assistance to members. Originally this unit was known as MOPR—the Russian initials for International Red Aid, and it was operated as a subdivision of the Comintern. Headquarters was maintained at Moscow, and branches existed in each foreign country where there was a Communist Party. In the United States it was known as International Labor Defense, and in California it maintained offices in San Francisco and Los Angeles. International Labor Defense was extremely militant during the period of the thirties, and participated in one way or another in virtually all of the major strikes and labor upheavals on the Pacific Coast.

The American Committee for Protection of the Foreign Born was created during the late twenties, and was closely linked with International Labor Defense which continued to function for a few years and then disappeared. (See *Workers' Monthly*, Oct., 1925, pages 531–538; *House Committee* Appendix 9, pages 344–345; 1948 *California Report*, pages 315, 316.) There were many subordinate units scattered over the country in the most populous areas where labor trouble and subversive activities flourished, each headed by an executive director, of which Mrs. Rose Chernin Kusnitz was one of the earliest.

On June 1, 1948, and again on September 21 of that year, the organization was declared to be subversive and Communist-operated by the Attorney General of the United States, who, at that time, was Tom Clark, who later became an Associate Justice of the United States Supreme Court. After the official findings of the Attorney General, the organization made little effort to disguise its Communist character and this was especially true in Los Angeles County, where Mrs. Kusnitz was widely known as a Party member, and it is even more true because of the fact that she now plays a double role as executive director of the Committee for Defense of the Bill of Rights and as a member of the Communist District Committee. It is therefore quite clear that members and sponsors of this organization who have remained in their positions for a period of years have no excuse to plead ignorance concerning its true nature.

Officers and Sponsors

The Committee for the Defense of the Bill of Rights has had its list of sponsors and officers, like all other front organizations—a list that includes liberals who cooperate with Communists, working members of the Communist Party, Fellow Travelers, and some members who are not quite certain about anything except what the group professes to stand for—and if they agree, then they also join and participate in its activities. Rose Chernin Kusnitz, who is commonly known as Rose Chernin, and will hereinafter be designated by that name, has been executive secretary for more than 20 years. For most of that time the offices were located at 326 West Third Street, Los Angeles, and some of the sponsors and officers who have served the organization include Robert W. Kenny, now a Superior Court Judge in Los Angeles County, Rev. Stephen H. Fritchman, Dorothy Marshall, Charles Gladstone, Sanford Goldner, John Howard Lawson and Frank Wilkinson. Kenny is notable for his membership in Communist front organizations over a period of more than 20 years; the same is true of Dorothy Marshall and Stephen Fritchman. Some have been repeatedly identified as members of the Communist Party, and these include Charles Gladstone, Sanford Goldner, John Howard Lawson and Frank Wilkinson. Kenny's name appears on an Exhibit, which is reproduced at the conclusion of this portion of the report, as an officer as of April 1969. Betty Rottger, who is Wilkinson's aide in another front organization known as the National Committee to Abolish the House Committee on Un-American Activities, has recently been listed as a sponsor, as has Reuben Borough, whom we discussed in connection with our explanation of the Constitutional Liberties Information Center in our 1963 report on page 100 et seq.

Annual Conferences

The Los Angeles Committee for the Defense of the Bill of Rights has held annual conferences since its inception. On April 19, 1969, the 19th conference was held, and we shall describe it in some detail. These conferences are ordinarily characterized by addresses delivered by the Committee's group of attorneys, most of whom have been

identified by sworn testimony as members of the Communist Party. For example, at the meeting of the organization held February 7, 1953, one of the featured speakers was Esther Shandler. This meeting was attended by Mrs. Ruth Drader, who was serving in the capacity of an agent for the state committee, and who testified concerning the meeting at a hearing held in Los Angeles in December, 1954. (See 1955 *California Report,* page 325.) Other attorneys identified as Communist Party members, who have also supported and acted for the Committee for the Defense of the Bill of Rights are Frank Pestana, Seymour Mandel, Rose Rosenberg, and John Porter.

Many of the meetings were held in the First Unitarian Church of Los Angeles, for which Stephen H. Fritchman, recently retired, had served as pastor for 20 years or more. On the evening of August 21, 1968, 8:30 P.M., such a meeting was held for the purpose of protesting alleged police brutality and to plan an anti-police demonstration on September 6. The demonstration was to be sponsored by the Los Angeles Committee for Defense of the Bill of Rights, acting in conjunction with the Peace Action Council and Peace and Freedom Party. Rose Chernin called the meeting to order, and Irving Sarnoff was elected to preside as chairman. Among the 180 persons present were representatives from a variety of radical groups. There was Mike McCabe from the Trotskyite Communists, accompanied by William Hathaway and Harold Schultz; there was Pierre Mandel, from the New Left School; Jerry Palmer, Students for a Democratic Society, and representatives from the Peace and Freedom Party. Nemmy Sparks, a Communist Party functionary, was also present, and the meeting, which was attended by some of our representatives, was actually run and dominated by Rose Chernin and Irving Sarnoff, supported by a solid majority of their comrades and collaborators.

The invasion of Czechoslovakia by Soviet armed forces had occurred one day before this meeting, and it produced an atmosphere of considerable tension. The spokesman announced that the Trotskyist Militant Labor Forum would hold a special meeting on the Czechoslovakian crisis on August 23, at 1702 East Fourth Street, Los Angeles. It was then announced that Dorothy Healey, chairman of the Southern Division, Communist Party of Cali-

fornia, was expected to issue a statement. This produced a feeling that the armed invasion would be vigorously attacked by the Trotskyites and defended by Mrs. Healey. But, as we shall see, matters did not work out as anticipated. Mrs. Healey's speech, delivered at Baces Hall, August 23, was a sharp criticism of the Soviet Union for its suppression of the Czechoslovakian regime by force—an attitude of courage and independence that resulted in her replacement as chairman of the Communist Party in southern California, a position that she had held for some 20 years.

It is, of course, obvious from a study of the persons who attended these various front meetings, that they did so interchangeably. Thus it will become increasingly apparent to those who continue to read the balance of this section of the report concerning southern California organizations that Frank Wilkinson, who heads one Communist front organization, was frequently seen in attendance at others. Rose Chernin was frequently seen at meetings of the Peace Action Council, the Peace and Freedom Party, and meetings of Mr. Wilkinson's organization. Betty Rottger was not only assisting Mr. Wilkinson, but she was also a sponsor with him of the Los Angeles Committee for the Defense of the Bill of Rights, and also frequently appeared at the same meetings that Mrs. Rose Chernin attended. Reuben Borough and Mrs. Dorothy N. Marshall, who were active in the Constitutional Liberties Information Center, were sponsors for the Los Angeles Citizens Committee for Defense of the Bill of Rights and also were seen in attendance at the other meetings. Rose Rosenburg, a lawyer and a member of the legal panel that served the Committee for the Defense of the Bill of Rights, was also a member of Friends of the Black Panthers organization in southern California, as we shall shortly see. Thus the interlocking nature of the front group network in the southern portion of the state gradually emerges as we continue to discuss the groups one by one.

Mr. Kenneth Rottger, 4031 Wilshire Boulevard, Los Angeles 90005, and the husband of Betty Rottger, whom we have already mentioned, is one of the bail fund trustees for the Committee for the Defense of the Bill of Rights.

There was an abundant supply of the usual literature at the conference. Some of it was disseminated by hand, and stacks of it were available from literature tables. One handbill entitled "Defend Huey Newton and Eldridge Cleaver," was issued by the Newton-Cleaver Defense Committee. It listed its chairman as Melvin Newton, and its Director as Milton Zaslow, its Secretary-Treasurer as Barbara Brittin. The sponsors included Alvah Bessie, Prof. Farrell Broslawsky, Joel Britton (not to be confused with Charles and Barbara Brittin), Rose Chernin, David Dellinger, Ben Dobbs, Vincent Hallinan, Michael Hallinan, Prof. Donald Kalish, and Morris Kight. The office of the organization was given as 619 South Bonnie Brae Avenue, Los Angeles 90057.

Literature from the National Lawyers Guild, which has been described as the legal bulwark of the Communist Party, contained a statement instructing demonstrators concerning their legal rights, in the following class-struggle language:

> "Grand Jury proceedings can be used by the Establishment to destroy community organizations and discourage peoples' activity. You cannot respond effectively to this repression alone. Work with your organization in meeting this threat."

Here the Establishment is clearly depicted as the enemy of the people, and its legal institutions held up as objects of contempt. There was much other written material available. A 160-page booklet by Charles R. Allen, Jr., was entiled "Concentration Camps, U. S. A." This treatise, published by the Citizens Committee for Constitutional Liberties, a front which we have already alluded to, carried forward the theme advanced by Mr. Wilkinson during his address. This scare propaganda proved somewhat premature, however, as the Federal Government recently decided to de-commission the relocation centers throughout the United States that had been used during World War II to relocate Japanese who were excluded from the Western Defense Command.

Since the 19th Annual Conference of the Los Angeles Committee for Defense of the Bill of Rights, it has stepped up its solicitation campaign for contributions to increase its bail fund. It reported that in late December

1969, "350 students, faculty and community supporters in 3 colleges were arrested. In many cases bail was set for their release pending trial." The "Progressive, radical, college and underground press," were urged to print this plea in full. Funds were to be sent to Mr. Rottger.

A financial report was submitted by John Uhrin, treasurer for the organization, disclosed that the budget for 1968 had been $40,000.00, but that due to the accelerated demonstrations and consequent arrests, should be increased to $45,000.00, and that the organization was now $8,000.00 in debt.

We very much doubt whether the Committee for Defense of the Bill of Rights would provide any of its bail funds for persons such as members of the Ironcross Motorcycle Club or the American Nazi Party who might be arrested during some of these demonstrations, which is the attitude of all of these subversive organizations whose solicitude is confined to the support of the organizations that collaborate with them, and for individuals who share their beliefs. All other individuals are considered as class enemies, ineligible to participate in the benefits provided by such organizations as the Committee for Defense of the Bill of Rights.

The organization's official publication, *the Tribunal,* Nov. 2, 1969, referred to the extending of official recognition of this militant Communist front by the Los Angeles State College, as follows:

> "Friends of the Los Angeles Committee for Defense of the Bill of Rights received recognition as an on-campus organization last week at Los Angeles State College. With this recognition, the facilities of the College may be used for speeches and conferences. Notices of L. A. Defense Committee activities may be posted on campus and in the College newspaper, and fund raising activities will be held regularly on campus. This is the first new area committee in about 19 years, and it is the first time the L. A. Defense Committee has been officially recognized on any college campus."

COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS
EXHIBIT I

LOS ANGELES COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS
326 West Third Street, Room 318
Los Angeles, California 90013

MARCH BULLETIN

CALENDAR OF EVENTS

March 22, Sat. 8 PM PARTY -

1251 S. St. Andrews Pl, Los Angeles. Rock Dance Band. Revolutionary Films. Food and Refreshments. Donation $1.00. For further information call 625-2169.

March 30, Sun. 4 PM BIRTHDAY PARTY

for Clara James, Chairman of South Side Defense Comm. 1251 So. St. Andrews Pl. Donation * Food * Music.

April 19, Sat. ALL DAY

L.A. Defense Comm. Annual Conference. Larchmont Hall. Workshops and nationally known speakers, 118 N. Larchmont. Registration Fee $2. Lunch 75¢

May 18, Sun. 2 PM PETE SEEGER

CONCERT at the Greek Theater, Sponsored by L.A. Defense Comm. and other Freedom and Peace Orgs. More information next bulletin.

✓ BSA PROGRAM

The Black Student Alliance is composed of representatives from Black Student Unions from 30 campuses in Southern California. The Black Students Alliance believes in freedom for all people, but not at the expense of black people. Because this is impossible in the United States of America as it presently exists, we demand:

1. That all existing educational institutions engaged in serving the black community be immediately turned over to and controlled by the people so that relevant and needed programs of education may be instituted.

2. That all institutions of

-continued on Page 2-

COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS
EXHIBIT II

OFFICERS

Rt. Rev. Walter Mitchell
Mrs. Charlotta Bass
Reuben Borough
Hugh DeLacy
Robert Freeman
Clara James
Judge Stanley Moffatt
Rev. Stephen H. Fritchman
Hon. Robert W. Kenny
Mrs. Dorothy N. Marshall

WE MUST ALL COMBAT RACISM
FOR OUR OWN SURVIVAL**

LET RAP Rap

ADVANCE DINNER RESERVATION

Please send your advance reservation for Conference Dinner not later than TUESDAY, APRIL 16, 1968.

ADVANCE CONFERENCE REGISTRATION

The following Delegates ☐ Observers ☐ will be at the Conference

Name.....

Address.....**Phone**.....

Name.....

Address.....**Phone**.....

Enclosed find $.....**for Registration Fees ($1.00 per person), and $**..... **for dinner reservations. (At $3.00 per person.)**

MAIL TO:

L. A. Committee for Defense of the Bill of Rights
326 W. Third Street Room 318 Los Angeles, California
MA 5-2169 — — MA 5-2160

Labor donated

COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS
EXHIBIT III

CONFERENCE PROGRAM

REGISTRATION — From 9:00 A.M. — One Dollar per Person

SESSION ONE — 10:00 A.M. to 12:00 Noon

SYMPOSIUM

GENERAL ASSEMPLY

Clara James . . . . Chairman
(Executive Director of the Southside Defense Comm.)

Speakers: Community Leaders

Kitty Sanderow . . . . . Jewish Community
Delfino Varella . . . . . Chicano Community
Brother Giballi . . . . . Black Students Alliance
Rose Chernin . . . . Annual Report . . . Executive Director L.A.C.D.B.R.

Luncheon . . . . . 12 noon to 1 P.M.

Luncheon Served on Premises - 75¢ per plate

SESSION TWO — 1:00 p.m.

GENERAL ASSEMBLY

PANELS

DEFENSE OF THE BLACK GHETTOS :

Franklin Alexander . . . . . Chairman
Velma Neal . . . . . Reporter
Valerie Mitchell . . . . . Secretary

DEFENSE OF THE BARRIOS:

Juan Marquez . . . . . Chairman
Juan Ochoa . . . . . Co-Chairman
Cruz Olmeda . . . . . Reporter
Rose Mary Davis . . . . . Secretary

DEFENSE OF THE CAMPUS:

Kendra Alexander . . . . . Chairman
Cliff Fried . . . . . Reporter
Shirley Nelson . . . . . Secretary

DEFENSE AGAINST REPRESSIVE LEGISLATION:

Ken Cloake . . . . . Chairman
Dan Lund . . . . . Reporter
Rosa Lucas . . . . . Secretary

Lee Gonzales . . . . . Conference Secretary

COMMITTEE FOR DEFENSE OF THE BILL OF RIGHTS
EXHIBIT III—Continued

Conference Program cont'd page 2.

SESSION THREE 3:30 p.m. to 5:00 p.m.

G E N E R A L S E S S I O N

Nathen Shapiro . . . .Chairman

REPORTS FROM PANELS:

Defense: (Black Ghettos)	Wilma Neal
Defense: (Barrios).	Cruz Olmeda
Defense: (Campus)	Cliff Fried
Defense: (Repressive Legislation).	Dan Lund
Credentials: . . . . . Helen Castello,	Dawn Goldstein
Resolutions: . . . . . F. Rinaldo, N. Shapiro,.	Ethel Bertolini
Financial:	John Uhrin
Nominations & Elections . . . .B. Fradkin, R. Spector, Art Dmytryk	Natalia Ramirez,

SOCIAL HOUR 5:00 to 6:30 p.m.

Angelo Bertolini, Mike Yueff,
Aaron Grosberg, Joe Ginsburg.

Steering Committee: . . Blanche & David Fradkin, Nathan Shapiro, Fred Firestone

C O N F E R E N C E D I N N E R

DINNER 6:30 p.m. - 10:00 p.m. $ 3.25 per person.

PROGRAM OPENING 8:00 P.M.

FRED RINALDO - M.C. and Introductory Remarks

Elaine Brown - Vocalist

Frank Wilkinson - Remarks

F R E D R I N A L D O Kendra or Valerie

Elaine Brown - Vocalist

DR. RICHARD WASSERSTROM - GUEST SPEAKER

A d j o u r n m e n t

THE NEW LEFT SCHOOL

Communist Party schools were scattered about the United States during the 1920's, shortly after the Communist Party was created. Originally they were known as Workers' Schools, one in Los Angeles having been instituted in 1927, and met on Wednesday evenings at 2706 Brooklyn Avenue. One of the officials connected with this early educational institution was the late Paul Crouch. Mr. Crouch, formerly on our staff, came from North Carolina, joined the Party when he was a comparatively young man, was sent to the Soviet Union for training, and held the rank as a Colonel in the Red Army, having studied at the Frunze Military Academy. After returning to the United States, he was made a member of the National Committee of the Party and put in charge of its youth movement nationwide.

The Workers' School in San Francisco was located at 675 Minna Street, and was later known as the Tom Mooney Labor School, and finally the California Labor School. In Los Angeles the Workers' School became known as the Peoples' Educational Center and finally functioned under the name of the Southern California Division of the California Labor School in San Francisco. All of these institutions, regardless of the names they adopted from time to time, have been repeatedly identified by official agencies as Communist educational units operated by the Party and designed for the indoctrination and recruiting of new members and specialized training for the older ones.

With the advent of the so-called New Left, it was necessary to have an educational institution tailored to its needs. Indeed, there was little use for the old Communist Party schools since the campuses were thrown open to a traveling group of high-powered Communists functionaries who lectured the students where facilities were provided at taxpayers' expense. A few years ago none of these institutions would have tolerated the presence of people like Herbert Aptheker, Dorothy Healey, and other well-known officials of the Communist Party to

harangue the students and incite them to a defiance of constituted authority; nor would they have tolerated for an instant the presence on their faculties of people like Herbert Marcuse, Angela Davis or Leon Wofsy.

In 1969 the Federal Bureau of Investigation submitted certain evidence before the House Sub-Committee on Appropriations, April 17. A portion of that testimony, dealing with this travelling school of Communist lecturers, was as follows:

> "Ever since its 18th National Convention in June, 1966, the Party in this Country has been moving more into open activities, running candidates for public office and attempting to improve its image with stepped-up public relations efforts through its publications. All this provides the Party with many opportunities to propagandize the American people. While on a trip through the United States in 1968, Gus Hall stated that through speaking appearances on television, on radio, and in person he was able to reach an estimated 50 million people.
>
> In addition to continuing to publish the twice-weekly newspaper, *The Worker,* Party leaders worked hard during 1968 to accumulate finances and staff for a new daily publication, *The Daily World,* which began publication 5 days a week, in July, 1968. Publication of *The Worker* was then discontinued.
>
> Also, during the academic year 1967–1968, the Communist Party—U. S. A. continued its program of having Party leaders appear on college campuses as speakers; 48 such appearances have been made during that school year. This is a small decrease when compared with the appearances during previous years. As I pointed out earlier, this is in line with the Party's relinquishment of some of its activity on the campuses to the New Left, in order to concentrate on industry.
>
> I submit a list of names of these leaders, the dates of their appearances and where they appeared:
>
> University of Santa Clara, Santa Clara, Calif., Herbert Aptheker, October 17, 1967;
>
> Los Angeles Valley College, Van Nuys, Calif., Dorothy Healey, November 21, 1967;

University of the Pacific, Stockton, Calif., Bettina Aptheker Kurzweil, November 28, 1967;
Raymond College of the University of the Pacific, Stockton, Calif., Bettina Aptheker Kurzweil, November 28, 1967;
California State College at Hayward, Hayward, Calif., Bettina Aptheker Kurzweil, February 8, 1968;
Stanislaus State College, Turlock, Calif., Bettina Aptheker Kurzweil, April 3, 1968;
San Fernando Valley State College, Northridge, Calif., Dorothy Healey, May 7, 1968;
Shasta Junior College, Redding, Calif., Bettina Aptheker Kurzweil, May 21, 1968." (We have listed only the appearances in California.)

In a subsequent section of the report on the infiltration of colleges and universities, we shall deal with the individual members of the Party who are currently employed in teaching positions in our California schools. The sensational and continuous publicity concerning the cases of Herbert Marcuse and Angela Davis have tended to divert attention from other individuals, equally objectionable, who are quietly entrenching themselves in academic positions from which they can exert untold damage.

Influence of the Berkeley Rebellion, 1964

One of the faculty members of the New Left School in Los Angeles, Joseph Byrd, is a teaching assistant at UCLA. He was quoted in the *National Guardian*, pro-Communist newspaper, September 25, 1965, and in *The New York Times* for December 12 of that year, as stating that the Free Speech Movement at the University of California in Berkeley undoubtedly triggered the need for the establishment of Marxist schools throughout the United States, including the New Left school in Los Angeles.

At any rate, in 1965 the institution was a going concern at 1853 South Arlington Avenue, Los Angeles 90019. It was staffed by representatives from the Communist Party, by Trotskyist Communists, members of the Du-Bois Clubs of America and assorted liberal groups. The

complete faculty list of this first New Left school, together with an outline of the courses offered was as follows:

> "Harvey Wheeler, co-author of the book 'Fail-Safe', Fellow, Center for the Study of Democratic Institutions; Rev. Stephen H. Fritchman, Minister First Unitarian Church, Los Angeles; Richard Lichtman, Fellow, Center for the Study of Democratic Institutions; Irving Laucks, Industrialist, Fellow, Center for the Study of Democratic Institutions; John Howard Lawson, Writer; Rev. Paul Sawyer, Minister, Valley Unitarian-Universalist Church; James Gallagher, Executive Board Member, Los Angeles Socialist Party; Dorothy Healey, southern California chairman, Communist Party; Theodore Edwards, Los Angeles chairman, Socialist Workers' Party (Trotskyist Communists); Margaret Thorpe, Los Angeles chairman, Students for a Democratic Society; Darrel Meyers, Los Angeles chairman, Young Socialist Alliance; John Haag, Los Angeles area chairman, W. E. DeBois Clubs of America; Jim Garrett, Los Angeles Field Representative, Student Non-Violent Coordinating Committees; Don Smith, chairman, Los Angeles CORE; Don Wheeldin, chairman Pasadena CORE; Hugh Manes, Civil Liberties Attorney, and David Frankel, Civil Liberties Attorney." (From New Labor School brochure, September, 1965.)

The New Left School courses of instruction are described in its various announcements. They were strikingly similar to the curricula of the old Communist schools, the radical courses being lightly sprinkled through with instruction in "Psychedelics, Love Power and The Honest Revolution; Modern Dance; Rock and Roll; Music and the State; Graphic Designs; Electronics; Communal Living, and Karate."

The overwhelming preponderance of the courses and the entire tenor of the school was, however, devoted to courses of which these are examples: "World Communist Movements; Black Nationalism; Marxism; Socialism; Tactics of the Negro Revolution; Practical Revolutions; Alienation; Anarchism and Voluntarism; Dialectics; Revolution and Contemporary Philosophy; Modern

Imperialism; Principles of Marxist Theory; Draft Counselling and Resistance, and Peoples' Warfare."

Other courses underscored racial conflicts with instruction on Negro and Mexican minorities and the teaching of the Swahili, Spanish and Chinese languages.

We devoted 61 pages of our 1953 report to the subject of "Communism and Education," describing how almost any course could be used by a teacher as a vehicle for widespread radical indoctrination. We cited examples, listed textbooks used for propaganda rather than objective teaching, and dealt with the growing violation of academic freedom in the classrooms. There is no need here, therefore, to repeat our explanation of how courses in woodworking or electronics, for example, may be utilized for subversive purposes.

The organizations that collaborated in establishing the New Left school did so because they deemed it easier, more practical, and less expensive than to operate several schools that would provide instruction for a variety of Marxist ideologies. The one common academic theme on which all could agree was that the courses should be based on the Marxist theory. But this meant one thing to the Socialists, something else to the Moscow line Communists, and was still differently viewed by the Trotskyists and followers of the Red Chinese interpretations by Chairman Mao. Experience indicated, too, that rivalry would inevitably develop among these groups, and especially between the Moscow line Communists, or "Stalinists," and the "Trots" as the Moscow line and Trotskyist Communists are commonly referred to in the movement. As in the Dow Action Committee and Peace Action Council, these struggles for control were continuous, yet in the united front demonstrations and other mass action matters, these two implacable rivals worked together. They are—and always have been—solidly in accord on one thing: the necessity to bring about the utter destruction of the United States Government by any and all means available.

The Moscow line Communists quickly gained the ascendancy in the New Left School, and selected Pierre Mandel as its coordinator. Ideologically he was well equipped, but as an efficient administrator he left something to be desired, and was unpopular with cliques of

faculty and students. Records of the U. S. Immigration Service and other governmental agencies show that Mandel was born in Russia, was active in the Communist Party of France, and came to the United States in 1948. He attended meetings of the Southern California District Committee of the Communist Party in 1958 and 1959, and was a delegate to its convention in 1959 and 1960.

The Faculty

The brochures issued by the New Left School from time to time not only set forth a list of the courses and their contents, but also the names of the instructors and a brief résumé concerning their educational qualifications and background. Since this institution was created for the purpose of bringing together the various radical groups, comprising the New Left and presented courses of instruction that were permeated by Marxism, it seems strange that the information concerning the faculty members was devoid of data about their activity in Communist front organizations and other radical groups. We therefore undertake to supply this information for the purpose of disclosing something about the common ideology of the faculty.

Members of the faculty included Daniel Bessie, the son of Alvah, and who is a historian of the Spanish Revolution. On March 7, 1964, he attended a meeting at the residence of Frank Pestana, in Los Angeles. Pestana has repeatedly been identified by sworn testimony as a member of the Communist Party. Others attending this meeting were Ron Ridenour, Franklin Alexander and Marvin Treiger. The meeting was being held for the purpose of formulating plans prior to the Socialist Youth gathering at San Francsico on March 21 and 22, 1964. This was the meeting that brought together groups of Marxist youth for the purpose of creating the W. E. DuBois Clubs of America, the youth adjunct of the Communist Party.

Joseph Byrd is a teaching assistant at UCLA, and was quoted by the *National Guardian,* September 25, 1965, as declaring that the Berkeley Rebellion had triggered a demand throughout the United States for the establishment of New Left schools similar to the one we are discussing.

Leo Baefsky, from Monterey Park, was a member of the Citizens Committee to Preserve American Freedoms, the Communist front organization that we have discussed in a previous report, and to which he made regular monthly contributions.

Michael Bye was a member of the Independent Student Union in 1960, and at that time resided at 4856 West 130th Street, Hawthorne. The Independent Student Union has also been described by us in previous reports as a Marxist organization of young people in Southern California. It was one of the component youth groups that attended the San Francisco conference in March, 1964.

Charles Brittin, the husband of Barbara Brittin, will be discussed hereafter as one of the more active members of the Communist-controlled Friends of the Panthers in Southern California.

Farrell Broslawsky, Rose Chernin and Kendra Alexander, we have already discussed.

Mike Davis is an active member of Students for a Democratic Society.

Robert Eugene Duggan was elected a member of the National Committee of the Communist Party of the United States in 1966, and three years later wrote an article for the official publication of the Communist Party, *Party Affairs,* Vol. 3, No. 2, Feb. 21, 1969, proposing that the Young Communist League be reconstituted to replace the stagnating DuBois Clubs of America.

Ben Dobbs is the organizational secretary for the Southern District of the Communist Party of California.

James Dann is the leader of the Progressive Labor Party in Southern California, which follows the ideological line established by the Chinese Communists and Mao Tse-tung.

Rev. Stephen H. Fritchman was also an instructor at the school; we have already discussed him as the Pastor of the First Unitarian Church in Los Angeles, a position from which he retired a few months ago.

Donald Freed was formerly connected with the Los Angeles Art Theater, and is an organizer for the Friends of the Panthers. He was indicted, with Shirley Jean Sutherland, of conspiring to obtain 10 hand grenades for the use of the Black Panther organization in southern California. The case was dismissed by United States

District Judge Warren J. Ferguson because of technical flaws in the indictment and a constitutional question concerning the validity of the provision under which the indictment had been issued. The United States Attorney for the Southern District of California has declared that he intended to appeal the decision. (*Los Angeles Times,* February 17, 1970.)

John Harris was the leader of the Progressive Labor Party at Watts, during the riots in that area. He was born in Birmingham, Alabama, was a former student at Howard University, and occasionally works at UCLA as a reader and teaching assistant in the Department of Sociology.

John Haag we have already discussed in connection with the Peace and Freedom Party and the DuBois Clubs of America.

Art Kunkin is the Publisher and Editor of the *Los Angeles Free Press,* a so-called underground newspaper, and was recently indicted for publishing the names and addresses of California narcotic agents operating out of the office of the California Attorney General.

John Howard Lawson, a motion picture writer, has been mentioned in many of our previous reports, and has been repeatedly identified by sworn testimony as a member of the Communist Party.

Richard Lichtman was an instructor at the University of California in Berkeley, a fellow in residence at the Center for the Study of Democratic Institutions in Santa Barbara, and his anti-capitalist, pro-Marxist views appeared in the November, 1966 issue of *Political Affairs,* page 50 at pages 51 and 54.

Ed Moritz is an activist in the Students for a Democratic Society in Los Angeles.

Jerry Palmer is an activist in the Students for a Democratic Society, a graduate student at UCLA, and one of the coordinators of the Vietnam Day Committee demonstrations.

Ron Ridenour is a graduate student at Los Angeles State College, and we have already referred to his arrest with Daniel Bessie at the residence of Frank Pestana.

Marvin Treiger is a graduate student at California State College in Los Angeles, was a member of the International Student Union, attended the Socialist Youth

meeting in San Francisco, heretofore mentioned, was arrested at the Pestana meeting on March 7 1964, and delivered the main address at the *Peoples World* picnic in Los Angeles on July 16, 1967. (*Peoples World,* July 8, 1967.)

Philip Taylor is a national committeeman of the Progressive Labor Party.

Helen Simon Travis is the wife of Robert C. Travis, who was secretary for the Communist Front organization known as the Constitutional Liberties Information Center in Los Angeles.

On April 17, 1969, J. Edgar Hoover, Director of the Federal Bureau of Investigation, testified before the House Subcommittee on Appropriations. What he had to say on that occasion concerning the New Left movement in general can be appropriately quoted here in connection with the New Left School in Los Angeles. Mr. Hoover said:

> "During 1968, the New Left movement in the United States continued to reveal itself as a firmly established subversive force dedicated to the complete destruction of our traditional democratic values and the principles of free government. This movement represents the militant, nihilistic and anarchistic forces which have become entrenched, for the most part, on college campuses and which threaten the orderly process of education as the forerunner of a more determined effort to destroy our economic, social, and political structures.
>
> The discontent expressed by the movement in this country is also found in other countries. As a result, the New Left movement is a new specter haunting the Western World. It is a movement that is united to some degree by common issues, such as the Vietnam War, Civil Rights matters, so-called capitalist corruption, and a so-called archaic university system.
>
> New Left funds are generally obtained from contributions, dues, sales of literature, benefits, advertisements, and its publications and fund drives. The main sources of revenue are contributions, and it is estimated that nearly 60% of Students for a Democratic Society Funds, for example, come from this source."

Mr. Hoover concluded his remarks concerning the New Left with this statement, which emphasizes what we have already said about the Communist Party departing from its former isolated position and identifying itself with mass movements in general and New Left activities in particular:

> "Communist Party—U. S. A. leaders have recently urged Party members to give time and money to 'New Left Demonstrations and Causes.' Much of the nationwide travel engaged in by prominent New Left leaders is paid for by honorariums paid to them generally out of student funds for their guest speaker appearances on college campuses."

NEW LEFT SCHOOL
EXHIBIT 1

The New Left School of Los Angeles • 1853 S. Arlington Ave., Los Angeles, Calif. 90019 • Telephone 731-4705

NLS understand

YOUR FRIENDS AND ENEMIES BETTER

learn

MORE OF HOW AND WHY SOCIETY SOCIETY CHANGES

new left school

SEEKING TO SERVE THOSE DESIRING TO UNDERSTAND THE NATURE OF PRESENT SOCIETY AND THE POSSIBILITY FOR SOCIAL CHANGE OFFERS CLASSES AND DISCUSSIONS IN MANY SUBJECTS INCLUDING THE FOLLOWING:

ETHICS
ECONOMICS
LABOR TACTICS AND HISTORY
PHILOSOPHY
POLITICS
NEGRO HISTORY
ALIENATION
MARXISM
AND OTHERS AS REQUESTED

FOR FURTHER INFORMATION AND THE FALL BROCHURE TEAR OFF THE COUPON BELOW, PLACE YOUR NAME AND ADDRESS ON THE OTHER SIDE, AND A ¢4 STAMP ON THIS SIDE, AND PLACE IN MAIL BOX.

TO: : NEW LEFT SCHOOL OF LA
L853 S. ARLINGTON AVE
L.A., Calif. 90019

ASSOCIATES*

Harvey Wheeler
Co-author of "Failsafe"; fellow, Center for the Study of Democratic Institutions

Rev. Stephen H. Fritchman
Minister, First Unitarian Church

Richard Lichtman
Fellow, Center for the Study of Democratic Institutions

Irving Laucks
Industrialist; fellow, Center for the Study of Democratic Institutions

John Howard Lawson
Writer

Rev. Paul Sawyer
Minister, Valley Unitarian-Universalist Church

James Gallagher
Executive Board Member, Los Angeles Socialist Party

Dorothy Healey
Southern California Chairman, Communist Party

Theodore Edwards
Los Angeles Chairman, Socialist Workers Party

Margaret Thorpe
Los Angeles Chairman, Students for a Democratic Society

Darrel Meyers
Los Angeles Chairman, Young Socialist Alliance

John Haag
Los Angeles Area Chairman, W.E.B. DuBois Clubs of America

Jim Garrett
Los Angeles Field Representative, Student Non-Violent Coordinating Committee

Don Smith
Chairman, Los Angeles CORE

Don Wheeldin
Chairman, Pasadena CORE

Hugh Manes
Civil Liberties Attorney

David Finkel
Civil Liberties Attorney

*as of Sept. 1965

*Organizations are listed for identification only, and do not imply support for the NEW LEFT SCHOOL by any group mentioned.

MOVEMENT TO ABOLISH COMMITTEES ON UN-AMERICAN ACTIVITIES

In 1959 the late Aubrey Williams set about to organize a national movement for the abolition of the House Committee on Un-American Activities; to unify the isolated and uncoordinated local groups dedicated to attack the Committee, which we will hereafter refer to as HUAC.

HUAC convened at San Francisco in May 1960, and during its hearings there was a mobilization against it by thousands of defiant young people, led by members of SLATE, from the Berkeley campus of the University of California, and by other radical groups from the Bay area. The highly controversial film "Operation Abolition" resulted from these demonstrations, which were forerunners of succeeding activities, such as those on Van Ness Avenue and at Sheraton-Palace Hotel, and that were to culminate in the Berkeley rebellion of 1964.

On Wednesday, August 17, 1960, Professor and Mrs. Joseph Morray held a meeting in their home at 2963 Magnolia Street, Berkeley. Mimeographed copies of the minutes of the meeting were widely distributed in an effort to arouse interest in bringing these anti-HUAC organizations together in a formidable unit that would have the political strength and the necessary membership and financial ability to make a determined effort against the reconstitution of HUAC by the House of Representatives of the United State Congress. The House Committee, which has been functioning since 1938, issued numerous reports as a result of its hearings, and took testimony from many undercover informants who were members of the Communist Party and its galaxy of front organizations. In these reports the exposure of Communist activities and organizations throughout the United States was made available to the American people, and kept Congress accurately informed as to the extent of domestic subversion. It was natural, of course, that it would be met by determined opposition from the elements it exposed.

Forty-eight people were present at the home of Professor and Mrs. Morray and represented the following organizations: East Bay Community Forum, Students Civil Liberties Union, Friends Committee on Legislation, Grassrooters Club, Democratic Party, Berkeley Community YWCA, SLATE, Womens International League for Peace and Freedom, Associated Students of Social Welfare, University of California, North California American Jewish Congress, Unitarian Fellowship for Social Justice, National Lawyers Guild, California Democratic Council, Trinity Methodist Church Committee on Christian Social Relations.

The meeting adjourned after deciding to call a Bay area conference, to establish a speakers panel, and to coordinate all California groups opposing HUAC.

Among these groups were two in Los Angeles that we devoted considerable space to in previous reports. They were the Citizens Committee to Preserve American Freedoms and the Constitutional Liberties Information Center. A letterhead of the first organization discloses that its address was 555 Northwestern Avenue, Los Angeles, and that its office coordinator was Betty Rottger. Others who were active in the organization included Rev. Stephen H. Fritchman, Dorothy Marshall, Frank Wilkinson, Jack Berman, Frank Spector, Martin Hall, Raphael Konigsberg, James Burford, William Elconin, John Howard Lawson, Rose Chernin, and Albert Maltz. Dr. Herbert Aptheker, the father of Bettina Aptheker Kurzweil, was scheduled to be the main speaker at a meeting of the organization which was held on July 8 1955, in the Embassy Auditorium in Los Angeles.

By 1961 the National Committee to Abolish the Un-American Activities Committee had perfected its organization. Aubrey Williams was its chairman, Dorothy Marshall was secretary, Judge Robert W. Kenny was treasurer and the field representative was Frank Wilkinson. National headquarters was established in Washington at the Carroll Arms Hotel, First and C Streets, Washington D.C. In January 1966 the Citizens Committee to Preserve American Freedoms sent a letter to all members of its executive board and its sustaining con-

tributors to the effect that the organization now presented for consideration the following propositions:

1. The Citizens Committee to Preserve American Freedoms be dissolved.

2. A new organization to be known as 'Southern Californians to Abolish the House Un-American Activities Committee,' be established. The letterhead and literature of the new organization would carry the following information: 'Formerly, Citizens Committee to Preserve American Freedoms,' and 'Affiliate: National Committee to Abolish the House Un-American Activities Committee.'

3. The Executive Board of the new organization would consist of all present members of the Citizens Committee to Preserve American Freedoms Executive Board who wished to continue on the Board, and one or more representatives to be invited from each Congressional District in southern California.

4. The new organization would be responsible for all funds raised in southern California for the HUAC Abolition Campaign; develop a budget; and allocate funds for local and national abolition work. First claim on funds raised by the new organization would be for payment of the salary of National Executive Director, Frank Wilkinson, and for the overhead, rent and telephone, of the national office in Los Angeles of the National Committee to Abolish the House Un-American Activities Committee.

5. The new organization would select a staff person, voluntary or paid, to work on a part-time or full-time program to coordinate Congressional District activities, education work, fund raising, and other duties the organization would establish to further the HUAC Abolition program in southern California.

The present executive board of the Citizens Committee to Preserve American Freedoms will continue until such time as the above proposals can be acted on. Five members of the present CCPAF Board were named to implement the above program, if approved. Dorothy Marshall, chairman; Rev. Stephen H. Fritchman; Raphael Konigsberg; Betty Rottger; and Vic Shapiro; Frank Wilkinson, ex-officio.

Attached to this letter, which bore the signature of Betty Rottger, was a ballot mailed to all members, and as a result of the returns, the Citizens Committee to Preserve American Freedoms was liquidated.

Shortly thereafter similar actions were taken by some of the other local organizations, and under the efficient guidance of Mr. Wilkinson, the national organization gathered momentum and strength.

Wilkinson, who had served as executive secretary of the Citizens Committee to Preserve American Freedoms, has been frequently mentioned in our reports. He first appeared before us as a witness during our investigation of the Los Angeles Housing Authority in 1952 and was on that occasion represented by three attorneys: Judge Robert W. Kenny, Robert S. Morris and Daniel G. Marshall. He invoked the Fifth Amendment in response to all questions about his Communist affiliations and activities, but there was ample evidence from the testimony of those in the Party with him to establish his membership. Mrs. Anita Schneider so testified as did Robert C. Ronstadt, and other witnesses on separate occasions, Mrs. Schneider and Ronstadt both having been undercover members of the Communist Party reporting to the F.B.I. for several years.

Ronstadt testified that he and Wilkinson were selected as members of an elite security Communist unit and that when the Housing Authority investigation was under way, his "specific instructions at that time were to hold Frank up and keep him from breaking, because he was close to breaking. The hierarchy of the Party at that time felt that there was a possibility of breaking Frank, and, as a result, I used to pick him up just about every evening when he was before the Committee or waiting to be heard. Of course, I instructed him to plead nothing else but the Fifth, and give his name and plead the Fifth, and this was it, and that I hammered home to him." (See testimony of Robert C. Ronstadt, HUAC, Oct. 10, 1962.)

When Wilkinson later appeared as a witness before HUAC, however, he refused to answer all questions concerning his Communist membership, and he also refused to rely on the protection of the Fifth Amendment. He was therefore found guilty of contempt of Congress, and

after his conviction was upheld by the U.S. Supreme Court on February 27, 1961, he was compelled to spend a year in a Federal penal institution. (*Congressional Record*, May 3, 1961.)

Growth and Activities

During the late summer of 1957 Wilkinson interviewed Congressmen and some of their staff members to determine what the general Congressional attitude would be toward the reconstitution of the House Committee, and thereafter reported his findings in a detailed statement to several interested parties. He had taken a leave of absence from the Citizens Committee to Preserve American Freedoms and was assisting another front organization in New York, The Emergency Civil Liberties Committee, in making this survey. The contacts made and the responses received were of great value in his later duties, after liquidation of the Citizens Committee in Los Angeles and the launching of the new National Committee to Abolish HUAC in 1960.

Both local and national anti-HUAC offices were situated at 555 North Western Avenue, Los Angeles. Dorothy Marshall, who had been chairman of the Citizens Committee to Preserve American Freedoms, was elected chairman of the organization that replaced it, Southern Californians to Abolish HUAC. The sponsors included James Berland, who in 1969 was an assistant to Rose Chernin in her front organization, Farrell Broslawski, Donald Kalish and Irving Sarnoff. Mrs. Marshall was also a vice-president in the national organization to Abolish HUAC.

In 1961, 23 years after the creation of HUAC and less than a year after the new anti-HUAC organization was established to abolish it, the House of Representatives re-established it by a vote of 412 to 6, with an appropriation of $331,000.00. (*New York Times,* March 5, 1961.)

Wilkinson was hard at work in his new role, perfecting details of establishing a network of centers in strategic locations and linking them together in a powerful, smoothly-functioning chain. Two years later, the House Committee was mandated to continue its work by a vote of 385 to 20, and a top appropriation of $360,000.00. (*Los Angeles Time,* Feb. 28, 1963). But Wilkinson's

organization had been raising money, too. Envelopes were mailed soliciting contributions and signatures on petitions for the abolition of the House Committee. Recipients of these postpaid return envelopes were directed to: "Make checks payable to Robert W. Kenny, Treasurer, National Committee to Abolish the House Un-American Activities, 555 North Western Avenue, Room 2, P.O. Box 74757, Los Angeles 4, California."

By the summer of 1964, the letterhead of NCA-HUAC (National Committee to Abolish HUAC), listed the following officers:

"Honorary Chairmen	James Imbrie
	Alexander Meiklejohn
	Clarence Pickett
Chairman Emeritus	Aubrey W. Williams
Chairman	Harvey O'Connor
	Little Compton R. I.
Vice Chairman	Dorothy Marshall, Coordinator
	Sylvia E. Crane, Organization and Liaison, P O Box 423, Cathedral Station New York City, 25 NY;
	Charles Jackson, East Coast Region
	Harry Barnard, Midwest Section;
	Rev. Edward L. Peet, West Coast Region
Southern Region Committee	Carl Braden
	John Lewis
	Rev. C. T. Vivian
	Rev. Wyatt Tee Walker
Secretary	Prof. Walter S. Vincent
Treasurer	Robert W. Kenny
Exec. Director and Field Representative	Frank Wilkinson

Midwest Regional Office, Chicago Committee to Defend the Bill of Rights, 431 South Dearborn Street, Room 424, Chicago 5, Illinois
East Coast Regional Office, New York Council to Abolish HUAC, 150 West 34th Street, Room 442, New York City, 1
Legislative Office, Washington Area Committee for the Abolition of HUAC, P. O. Box 2558, Washington 13, DC."

Despite the determined efforts of NCA-HUAC, Congress continued to provide funds for the investigation of domestic subversion, and even some of HUAC's most vocal critics were forced to concede that it had accomplished some extremely valuable work. But these concessions came from the liberals, never from Communists.

The liberals were critical of some of HUAC's techniques. The Communists were inherently dedicated to the opposition of any investigation of subversion, because the principal target would necessarily be the Communist Party and its network of front organizations.

The use of the word "abolition" in the title of this anti-HUAC Front carried a concept of utter liquidation. There was no compromise in the attack by the Communists and no suggestion of reform. As the new drive picked up momentum its propaganda began to demand the abolition of the U.S. Senate Subcommittee on Internal Security, as well as HUAC. And since 1967 the attack has been expanded to include all state legislative committees, including this one which has been in continuous operation for the California Legislature for the past 30 years.

Generally the efforts against the California Subcommittee and its predecessor committees have been run from the San Francisco office of the Wilkinson organization, and have included printed attacks, attempts to ascertain in advance what the contents of the reports would be and to emasculate them, attempts to mobilize political opposition, and the instigation of harassing tactics in general. The same tactics have, of course, been employed against the other legislative agencies, including the Subversive Activities Control Board.

This broadening of the scope of NCA-HUAC provoked some opposition among its members and staff, and when HUAC became a standing committee and thereafter changed its name to the House Internal Security Committee, the anti-HUAC organization was compelled to expand its already cumbersome name from the National Committee to Abolish the House Committee on Un-American Activities (NCA-HUAC), to the National Committee to Abolish the House Committee on Un-American Activities/House Committee on Internal Security, (NCA-HUAC/HISC).

National Conference 1967

The House of Representatives appropriated $425,000.00 for HUAC in 1966, the vote being 299 to 24. This was considerably more than had been anticipated, as the January, 1966 issue of *Abolition News,* NCA-HUAC

publication, stated that the 1965 grant of $420,000.00 had been "unprecedented", and predicted that "HUAC's 1966 appropriation request faces an increasingly critical House of Representatives." Shortly thereafter the "unprecedented" 1965 grant was boosted by $5,000.00. This appropriation naturally provided a topic of almost continuous discussion at the National Conference, held in Chicago at the Pick-Congress Hotel, April 8 and 9, 1967. From the schedules, rosters and records of proceedings circulated at this conference, it is learned that Chairman Harvey O'Connor opened the conference on the morning of April 8, and after introducing the staff members and national officers, the balance of the two-day session was occupied with speeches, discussions and panels. A roster of those present, as issued at the Pick-Congress Hotel, was as follows:

"Donna Allen, Washington representative,
3306 Ross Place, NW, Washington, D. C. 20008;
Prof. Russell Allen, Michigan State University,
East Lansing, Michigan;
Frank A. Anglin, Jr., President, Chicago Chapter, National Lawyers Guild, and Treasurer, Chicago Committee to Defend the Bill of Rights,
33 North Dearborn Street, Chicago, Illinois 60602;
Rev. William Baird, Essex Community Church, Executive Director, Chicago Committee to Defend the Bill of Rights,
7240 South Blackstone, Chicago, 60619;
Simon Beagle, American Federation of Teachers,
215 East Dunhill Road, Bronx New York 10467;
Bernice Belton, Executive Secretary, Southern Californians to Abolish HUAC; Director NCA-HUAC's Southern California Area Office,
555 North Western Avenue, Los Angeles, California 90004;
Prof. Daniel M. Berman, American University, NCA-HUAC's Vice-Chairman East Coast,
1901 F Street, NW, Washington, D. C. 20006;
Barbara Bernstein, Chairman, Dayton Committee for the Bill of Rights,
1426 Katalpa Drive, Dayton, Ohio, 45406;
Barbara Bloomfield, NCA-HUAC's Southern Regional Director,
3210 West Broadway, Room 4, Louisville, Kentucky, 40211;
H. H. Booker, International Workers of the World,
536 North Rush Street, Room 621, Chicago, Illinois, 60611;
Carl Braden, Director, Southern Conference Educational Fund,
4403 Virginia Avenue, Louisville, Kentucky, 40211;
Prof. Francis Broadhurst, College of Emporia, Emporia, Kansas, Committee to Abolish HUAC;

Prof. Howard Buchbinder, Social Worker and Consultant to the office of Economic Opportunity,
7334 Dorset Street, St. Louis, Missouri, 63130;
Rev. Edwin T. Buehrer, Third Unitarian Church Board of Directors, Chicago Committee to Defend the Bill of Rights,
132 North Menard Street, Chicago, Illinois 60644;
Edward Carey, Board of Directors, Chicago Committee to Defend the Bill of Rights,
3630 West 135th Street, Robbins, Illinois, 60472;
Michael S. Chrisman, Student,
Lake Forest College, Lake Forest, Illinois, 60045;
Charles Cogen, International President, American Federation of Teachers,
535 North Michigan Avenue, Chicago, Illinois, 60611;
Tess Cogen,
535 North Michigan Avenue, Chicago, Illinois, 60611;
Milton Cohen,
5322 Kimbark Street, Chicago, Illinois, 60615;
Prof. Verne Countryman, Harvard University, Chairman, Massachusetts Committee to Abolish HUAC,
Cambridge, Massachusetts 02138;
Sylvia E. Crane, NCA-HUAC's Vice-Chairman, Organization and Liaison,
315 West 106th Street, Room 16B, New York, NY 10025;
Richard Criley, Secretary, Chicago Committee to Defend the Bill of Rights and NCA-HUAC's Midwest Regional Director,
431 South Dearborn Street, Room 803, Chicago, Illinois, 60605;
F. Crowley, Southern Christian Leadership Conference,
5047 Glenwood Street, Chicago, Illinois, 60640;
Prof. Stanton L. Davis, Clevelanders for Constitutional Freedom,
3838 East Antisdale Road, Cleveland, Ohio 44118;
Ernest DeMaio, United Electrical Workers Vice-President,
27 South Ashland Avenue, Chicago, Illinois, 60607;
Jerry DeMuth, Journalist,
1943 West Chase Street, Chicago, Illinois, 60626;
Annette Dieckmann, American Civil Liberties Union,
Chicago, Illinois;
Prof. Thomas I. Emerson, Yale University, NCA-HUAC's Advisor on Constitutional Law,
2271 Ridgeroad, North Haven, Connecticut 06473;
Carl F. Farrs, Southern Christian Leadership Conference,
1435 North Hudson Street, Chicago, Illinois 60610;
Abe Feinglass, International Vice-President, Amalgamated Meat Cutters and Butcher Workmen,
2800 North Sheridan Road, Chicago, Illinois 60657;
Hugh Fowler, Chairman, DuBois Clubs of America,
180 North Wacker Drive, Chicago, Illinois 60606;
Peter L. Gale, Greater Philadelphia ACLU (American Civil Liberties Union),
4604 Chester Avenue, Philadelphia, Pennsylvania 19143;

Dale Gronemeier, Executive Secretary, Northern Californians to Abolish HUAC and NCA-HUAC's Northern California Area Director,
1842 East 25th Street, Oakland, California, 94606;
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Hazel Henderson, Emporia Committee to Abolish HUAC,
132 West Twelfth Street, Room 9, Emporia, Kansas, 66801;
Mrs. Ernest Higgins, National Board, Womens' International League for Peace and Freedom,
834 South Kenilworth Street, Oak Park, Illinois 60304;
Rev. Herschel Hughes, Chairman, Social Action Committee, United Church of Christ,
228 West Sixth Street, Tilton, Illinois;
Solon Ice, Secretary, Coordinating Council of Community Organizations,
7947 South Woodlawn Street, Chicago, Illinois 60619;
L. H. Jackson, Vice-President, West Side Chapter, National Association for the Advancement of Colored People,
3450 West Jackson Street, Chicago, Illinois 60624;
David Jehnsen, Coordinator West Side Christian Parish and Board Member, Chicago Committee to Defend the Bill of Rights,
3101 West Warren Boulevard, Chicago, Illinois 60612;
Prof. Michael Johnson, Emporia Committee to Abolish HUAC,
1208 Beverly Street, Emporia, Kansas, 66801;
Chester Kamin, Attorney at Law, Raymond, Mayer, Jenner and Block,
135 South LaSalle Street, Chicago, Illinois 60603;
John Kerney, Director, Independent Voters of Illinois,
22 West Monroe Street, Chicago, Illinois 60603;
Marjorie Kinsella, Secretary, Chicago Peace Council,
2552 North Southport Street, Chicago, Illinois 60614;
David LeMau, DuBois Clubs of America,
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Sidney Lens, Business Representative, Local 329 United Service Employees' Union,
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Prof. David R. Luce, University of Michigan, Milwaukee Chapter, American Civil Liberties Union,
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Prof. Curtis MacDougall, Northwestern University, Vice-Chairman, Chicago Committee to Defend the Bill of Rights,
537 Judson Avenue, Evanston, Illinois 60202;
Richard J. Maiman, Student Body President, Lake Forest College, Box 499, Chicago, Illinois 60045;
Dorothy Marshall, Chairman, Southern Californians to Abolish HUAC, NCA-HUAC's Vice Chairman and Coordinator,
555 North Western Avenue, Room 2, Los Angeles, California 90004;
Ernest Mazey, Director, American Civil Liberties Union of Michigan, and an Observer for the National Office of the ACLU,
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Fr. F. J. McGraph, St. Finbarr Roman Catholic Church,
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James Melton, Emporia Committee to Abolish HUAC,
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Ann Mercer, Clevelanders for Constitutional Rights,
5207 Gifford Street, Cleveland, Ohio 44144;
Lyle Mercer, Executive Secretary, Washington State Committee to Abolish HUAC, Member State Board and Chairman of Committee on HUAC, American Civil Liberties Union of Washington, and NCA-HUAC's Western Regional Director,
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Jay Miller, Executive Director, Illinois Division of American Civil Liberties Union and an Observer for the National office of the ACLU,
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Patti Miller, Southern Christian Leadership Conference,
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Susan Miller, DuBois Clubs of America,
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Donna Morgan, Students for a Democratic Society,
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Fr. Richard Morrisroe, Our Lady of Angels, Roman Catholic Church, 730 North Wabash, Chicago, Illinois 60611
Ruth Muench, Board of Directors, Chicago Committee to Defend the Bill of Rights,
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Rev. Richard Mumma, Chaplain, Harvard University, Treasurer, Massachusetts Committee to Abolish HUAC,
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Russ Nixon,
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Betty Norbeck, Iowa City Committee to Abolish HUAC,
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Prof. Victor Obenhaus, Chicago Theological Seminary, Vice-Chairman Chicago Committee to Defend the Bill of Rights,
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Harvey O'Connor, Chairman, NCA-HUAC,
Little Compton, Rhode Island, 02837;
Charles Ostrofsky,
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Richard Orlikoff, Attorney at Law,
1371 East Park Place, Chicago, Illinois 60637;
Rev. Edward L. Peet, Methodist Church, Hayward, California, Chairman, Northern Californians to Abolish HUAC, NCA-HUAC's Vice-Chairman, Western Region,
628 Schaefer Road, Hayward, California 94544;
Reed Peoples, Southern Christian Leadership Conference,
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Jesse Prostein, International Representative, United Packing House Workers of America,
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Albert A. Raby, Coordinating Counsel of Community Organizations,
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Don Rose, Board of Directors, Chicago Committee to Defend the Bill of Rights,
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Henry Siegel, Clevelanders for Constitutional Rights,
5207 Gifford, Cleveland, Ohio 44144;
Jack Spiegel, Director of Organization, United Shoe Workers Union; Chairman, Spring Mobilization, Chicago Area; Treasurer, Trade Union Division, Committee for a Sane Nuclear Policy; Board of Directors, Chicago Committee to Defend the Bill of Rights,
647 Buckingham Place, Chicago, Illinois 60657;
Robert Schwartz, Students for a Democratic Society,
Roosevelt University, 4821 North Paulina, Chicago, Illinois 60640;
Naomi Tabbert, Observer, Chairman, Anti-HUAC Committee, Toledo and Ohio Division, American Civil Liberties Union,
3616 Wyckliffe, Toledo, Ohio 43613;
Marnesba Tackett, Director, United Civil Rights Council,
2540 Fourth Avenue, Los Angeles, California 90018;

Eugene Tournour, Regional Action Council, Congress of Racial Equality,
204 West North Avenue, Chicago, Illinois 60610;
Prof. Walter S. Vincent, University of Pittsburgh, NCA-HUAC's Secretary,
209 Sleepy Hollow Road, Pittsburgh, Pennsylvania 15216;
Rev. C. T. and Octavia Vivian, Executive Board, Southern Christian Leadership Conference and Southern Conference Educational Fund,
6836 South Merrill, Chicago, Illinois 60649;
James Milburn, Chairman, East-West Coordinating Council, St. Louis, Missouri;
Prof. L. T. and Laura Wyly, Northwestern University, 1210 Gregory Street, Wilmette, Illinois, 60091;
Frank Wilkinson, NCA-HUAC's Executive Director-Field Representative."

Post-Conference Staff Meeting

Apparently all of the business of the NCA-HUAC was not settled during the transactions at the Chicago Convention, because less than three months thereafter a high-level staff meeting was held at the Greenwood Lodge at Soquel, Santa Cruz County, California. It is operated by William and Elsie Beltram, who before assuming management of the Lodge, resided in Oakland where they were active in various Communist front organizations, especially those sponsored by or on behalf of the *Peoples World.* (See 1953 *California Report,* pages 278, 282; 1961 California report, page 30.)

Those who were scheduled to attend the Greenwood Lodge meeting were Mr. and Mrs. Frank Wilkinson; Mr. and Mrs. Rottger, Dale Gronemeier, from the San Francisco office; Arnold Lockshin, Director of the New England region; Lyle Mercer, from the Seattle office; Richard Criley from the office at Chicago; Dorothy Marshall, national coordinator and former officer of Citizens Committee to Preserve American Freedoms; Donna Allen, from the office at Washington, D.C.; Miriam Rothschild and Judy Rudnick, from San Francisco; Carl and Anne Braden, from Kentucky; Rev. Edward Peet, Vice-Chairman of the West Coast region from Hayward, California, and Barbara Bloomfield, Southern Regional office in Kentucky.

The 1968 letterheads of NCA-HUAC disclose that Mrs. Judith Soltes Rudnick had been Director of Northern

California area, and also that Robert S. Morris had replaced Judge Robert Kenny as National Treasurer. This change, we assume, was occasioned when Kenny was appointed to the Superior Court Bench in Los Angeles by former Governor Pat Brown after his defeat by Governor Reagan, and should have made little practical difference in the operation of this national organization, since Mr. Morris was an attorney in Kenny's office, and was a counsel, with Kenny and the late Daniel Marshall, when Frank Wilkinson appeared before our Committee during the investigation of the Los Angeles Housing Authority in 1952. (1953 *California Report,* page 86.) It should be observed, however, that Judge Kenny continued to occupy an official position in another Communist front organization also operated by a Communist Party functionary, the Los Angeles Committee for Defense of the Bill of Rights.

In 1968, Dale Gronemeier, who had been Executive Director of the NCA-HUAC office in San Francisco, decided to resign following a disagreement with the majority of the national staff over the expanded activities and operational techniques of the organization. He was also embroiled in a dispute with the Department of Rhetoric on the Berkeley campus of the University of California. He was employed as a teaching assistant in the Rhetoric Department, and charged political bias on the part of the Department Head, Professor Leonard Nathan. Gronemeier also was Vice-President of the Teaching Assistants' Union, and Conn Hallinan, who was instrumental in the organizing of the DuBois Clubs, and was now President of Local 1570, American Federation of Teachers, joined Gronemeier in the attack against Professor Nathan.

Thus Gronemeier was fully occupied with his own operation to abolish the head of his University Department, and dropped away from the operation to abolish the House Committee on Un-American Activities. (*Daily Californian*, May 13, 1969.) Hallinan is quoted as charging that "A political purge of union activists is underway in the Department of Rhetoric, with the full knowledge and cooperation of its chairman, Leonard Nathan."

The Gronemeier disaffection from NCA-HUAC was one of several personnel changes that occurred during

1968 and 1969. The organization was originally created for the sole purpose of bringing about the liquidation of the House Committee. Then it was expanded to bring about the abolition of the Senate Internal Security Subcommittee, and then all legislative committees, both state and federal, engaged in the investigation of domestic subversion.

Tenth National Committee Meeting

On March 22–24, 1969, the NCA-HUAC/HISC (it was in 1969 that the House Committee changed its name from House Committee on Un-American Activities to House Internal Security Committee), met in its tenth session, this one designated "Legislative Conference and Lobby, In Pursuit of First Amendment Principle to Abolish Inquisitorial Committees & Oppose Repressive Laws.

The purpose of this meeting in Washington, D.C. is set forth in the title quoted above from an official document circulated at the conference. Now the purposes of the organization not only aimed for the abolition of the House Committee, but it was dedicated to the abolition of all "inquisitorial committees", and for the opposition to all "repressive laws."

Headquarters for the convention was established at Dodge House, 20 E Street, NW, Washington, D.C. 20001. Richard Criley, Donna Allen, Frank Wilkinson, Anne Braden, Mike Klonsky, David Dellinger and Attorney William Kunstler were among the featured speakers. It was not long after this convention that Dellinger, one of the seven defendants in Federal Judge Hoffman's Court in Chicago would be represented by Kunstler, whose fame prior to this spectacular trial had been confined almost entirely to radical left circles.

Most of the proceedings were conducted in panel groups on Sunday March 23. The panel on "Inquisitorial Committees" was conducted under the chairmanship of Phillip J. Hirschkop, who was also Vice-Chairman of the East Coast Region, and its principal speakers were Prof. Arthur Kinoy, from Rutgers University Law School, and William Kunstler.

The panel on "Pending Legislation and Hearings: Priorities for Action," was led by Sylvia E. Crane, Vice-Chairman and Organization Liason for NCA-HUAC/

HISC, and Prof. Thomas I. Emerson from Yale University, and Donna Allen who runs the Washington office.

The third panel dealt with "Defense of Right to Dissent in Period of Social Crises," and its chairman was Rev. C. Vivian. He was also Vice-Chairman of the Mid-West Region for the national organization. The participants were Prof. Douglas Dowd, Cornell University; James Rowan, Southern Commitee Against Repression; Anne Braden, identified Communist from the staff of the Southern Conference Educational Fund; Mike Klonsky, National Secretary of Students for a Democratic Society, and Dave Dellinger, chairman of the National Mobilization Committee to End War in Vietnam.

Rev. Edward L. Peet, is Vice-Chairman of the West Coast Region, and presided over the panel on "Opposition to Repressive Laws." Participants were Attorney John J. Abt, Dennis J. Roberts, and Prof. Sidney Peck from Western Reserve University.

The fifth panel operated under the chairmanship of Dorothy Marshall, and was concerned with the "Organizational and Political Goals of NCA-HUAC, 1969." Participants were staff members.

An analysis of these several topics discloses how the expansion of the scope of NCA-HUAC/HISC resulted in one panel on Ways and Means to accomplish the original goal of the organization, and the other four were devoted to activities of the New Left and peripheral matters.

The official roster listed the following persons who were in attendance at the Washington meeting:

"*California:*

Louise Bauers, 7882 Matilija, Van Nuys, Calif 91402, Women for Legislative Action;

Bernice Belton, 555 North Western Avenue, Room 2, Los Angeles, Calif. 90004, Director, Southern Californians to Abolish HUAC/HISC;

Rose Chernin, 326 West Third Street, Los Angeles, California 90013, Executive Director, Los Angeles Committee for Defense of the Bill of Rights;

Prof. John Ellingston, 1522 Funston Avenue, San Francisco. California 94122, Northern Californians to Abolish HUAC/HISC;

Mike Harris, 5604 Dorothy Way. San Diego, California 92115;

Rebecca Krieger, P. O. Box 77221, San Francisco California 94107, Director of Northern California Area NCA-HUAC/HISC, Executive Secretary, Northern Californians to Abolish HUAC/-HISC;

Mr. and Mrs. James Krieger, Terra Krieger, 4420 Third Street, Riverside, California 92501;

Juan Carlos Lopez, 173 Peralta Avenue, San Francisco, California 94110, Teacher, Defendant, SACB (Subversive Activities Conrol Board) Proceeding, March, 1969;

Rev. Edward L. Peet, 350 Arballo Drive, Apt 6 C, San Francisco, California 94132, Glide Memorial Methodist Church; Vice-Chairman, Western Region NCA-HUAC/HISC, Chairman, Northern Californians to Abolish HUAC/HISC.

Miriam Rothschild, 35 Galilee Lane, San Francisco, California, 94115; Northern Californians to Abolish HUAC/HISC;

Frank Wilkinson, 555 North Western Avenue, Room 2, Los Angeles, California 90004, Executive Director-Field Representative NCA-HUAC/HISC;

Connecticut:

Prof. and Mrs. Thomas I. Emerson, Law, Yale University, New Haven Connecticut 06520, Advisor on Constitutional Law to NCA-HUAC/HISC;

Illinois:

Milton Cohen, 5322 Kimbark Avenue, Chicago, Illinois 60615; Social Worker Plaintiff, Stamler, Hall & Cohen; Constitutional Challenge to HUAC;

Richard Criley, 431 South Dearborn Street, Room 803, Chicago, Illinois 60605; Executive Director, Chicago Committee to Defend the Bill of Rights; Midwest Regional Director NCA-HUAC/-HISC;

Rev. Martin Deppe, 8712 South Emerald Avenue, Chicago, Illinois 60620; Chairman, Board of Social Concerns, Northern Illinois Conference, United Methodist Church;

Abe Feinglass, 2800 North Sheridan Road, Chicago, Illinois 60657; International Vice-President Amalgamated Meat Cutters & Butcher Workmen;

Prof. Robert J. Havighurst, 5844 Stoney Island, Chicago, Illinois 60637; Education, University of Chicago, Co-Chairman Chicago Committee to Defend the Bill of Rights;

Dave Jehnsen, 3302 Congress Parkway, Chicago, Illinois 60624; Field Trainer, Vista Program. Board of Directors, Chicago Committee to Defend the Bill of Rights;

Daniel Kaufman, 1503 West 91st Street, Chicago, Illinois, 60620; Staff Member, Chicago Federation Union of American Hebrew Congregations;

Fr. Francis J. McGrath, 2455 North Hamlin Avenue, Chicago, Illinois 60647; Board of Directors, Chicago Committee to Defend the Bill of Rights;

Jesse Prosten, 4800 Chicago Beach Drive, Chicago, Illinois 60615; International Representative, Amalgamated Meat Cutters & Butcher Workmen;

Walter Soroka, 1440 Rosita, Palatine, Illinois 60067; Board of Directors, Chieago Committee to Defend the Bill of Rights;

Beatrice M. Stuart, 720 Coronet Road, Glenview, Illinois 60025; Staff Assistant, Chicago Committee to Defend the Bill of Rights;

Edmonia Swanson, 6926 South Wabash Avenue, Chicago, Illinois 60637; Illinois State Board of Social Concerns, United Church of Christ;

Quentin Young, M. D., 1512 East 55th Street, Chicago, Illinois 60615; Past National Chairman, Medical Committee for Human Rights; Plaintiff Constitutional Challenge of HUAC;

Iowa:

Lowell Foote, 6667 Hawkeye Court, Iowa City, Iowa 52240. Student, University of Iowa Law School, Iowa City Committee to Abolish HUAC/HISC;

Kentucky:

Carl Braden, 3210 West Broadway, Louisville, Kentucky, 40211; Executive Director, Southern Conference Educational Fund, Inc.; Southern Regional Committee, NCA-HUAC/HISC;

George Meyers, 25 West 26th Street, New York, NY 10010; Labor Secretary, Communist Party, USA;

Loren Siegel, 30 West 90th Street, New York, NY 10024;

Nancy Stearns, 296 West 11th Street, New York, NY 10014; Counsel, Constitutional Challenges of HUAC;

North Carolina:

Jim Rowan, 1009 Burch, Durham, North Carolina 27701; Chairman, Southern Committee Against Repression;

Ohio:

Lynda Anastasia, 1920 West Grand Avenue, Dayton, Ohio, 45407; Social Worker;

Barbara Bernstein, 1426 Catalpa Drive, Dayton, Ohio 45406; Chairman, Dayton Committee to Defend the Bill of Rights

Prof. Aaron Dindman, 628 North Wittenberg, Springfield, Ohio 45504;

Chris Buchanan, 229 West Dunedin Road, Columbus, Ohio 43214; Student;

Prof. Franklin Buchanan, 229 West Dunedin Road, Columbus, Ohio 43214; Education, Ohio State University, Chairman, Columbus Committee to Defend the Bill of Rights;

Terry Snider, 10636 West Panther Creek Road, Bradford, Ohio 45308; Social Worker;

Oregon:

Rubin Lenske, 7243 Southeast 34th Street, Portland, Oregon 97202;

Charles Porter, 2680 Baker Street, Eugene, Oregon 97401; Chairman, Oregon Committee to Abolish HUAC/HISC;

Pennsylvania:

Candie Black, 4714 Hazel Avenue, Philadelphia, Pennsylvania 19143; Teacher CORE;

Katie Eastman, 4437 Chestnut Street, Philadelphia, Pennsylvania 19104; Staff, Pennsylvania ACLU (American Civil Liberties Union);

Mr. and Mrs. Peter Gale (Barbara), 4207 Chester Avenue, Philadelphia, Pennsylvania 19104; Former Director, Southern Regional Office NCA-HUAC/HISC (Mrs.)

Mr. and Mrs. Herman Liveright, (Betty), 200 Locust Street, Philadelphia, Pennsylvania 19106; Development Director, Highlander Research and Education Center (Mr.)

Mr. and Mrs. Frank Petersen (Bertha), 2006 Walnut Street, Philadelphia, Pennsylvania 19103; Resistance;

Prof. and Mrs. Walter Vincent (Helen), 209 Sleepyhollow Road, Pittsburgh, Pennsylvania 16213; Medicine, University of Pittsburgh, Secretary, NCA-HUAC/HISC;

Rhode Island:

Mr. and Mrs. Harvey O'Connor (Jessie), Little Compton, Rhode Island 02837; Chairman, NCA-HUAC/HISC;

Utah:

Uda Hanson, 191 North First West, Spanish Fork, Utah, 84660;

Wayne Holley, 175 North 1600 West, Mapleton, Utah, 84663; Defendant, SCAB Proceeding, July, 1968, Steelworker;

Mr. and Mrs. Bob Sayer, (Irma), Route 1, Springfield, Utah 84663; Farmer;

Virginia:

Thelma Deviange, 3316 North Vernon Street, Arlington, Virginia 22207;

Phil Friedman, 2994 South Columbus Street, Arlington, Virginia 22206;

Phillip J. Hirschkop, Post Office Box 234, 110 North Royal Street, Alexandria, Virginia 22313; Counsel, Constitutional Challenges of HUAC, Oct. 1968; Vice-Chairman, East-Coast, NCA-HUAC/-HISC;

Steve Romines, 1715 Army-Navy Drive, Arlington, Virginia 22202;

Washington State:

Prof. Alex Gottfried, 4811, 107th, NE, Seattle, Washington 98125; Political Science, University of Washington; Chairman, Washington State Committee to Abolish HUAC/HISC; Vice-Chairman, Washington State ACLU;

Dorothy Johnson, Route 1, Box 812, Vashon, Washington 98070; Washington State Committee to Abolish HUAC/HISC;

Lyle Mercer, 747 21st Avenue East, Seattle, Washington 98102; Executive Secretary, Washington State Committee to Abolish HUAC/HISC; Director, Western Region, NCA-HUAC/HISC;

Washington, D. C.:

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Barbara Bick, 2231 Vancroft Place, NW, Washington, D. C. 20008; Editor, *W. S. P. Memo,* National Office, Womens' Strike for Peace;

Lola Boswell, 1301 Masachusetts Avenue, NW, Washington, D. C., 20005;

Margot Burman, 100 Seventh Street, NE, Washington, D. C., 20002; Washington Representative-Assistant, NCA-HUAC/-HISC;

David Clarke, 1909 19th Street, NW, Washington, D. C. 20009;

Jim Cunningham, 1216 30th Street, NW, Washington, D. C. 20006;

Leanna Eikenberry, c/o Myrtle Oliver, 1438 Iris Street, NW, Washington, D. C. 20012;

Joseph Forer, 711 14th Street, NW, Washington, D. C. 20005; of Counsel, SACB Proceedings, Revived Internal Security Act; Sponsor, Washington Area Committee for the Abolition of HUAC/HISC;

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Anthony Henry, 1909 19th Street, NW, Washington, D. C. 20005, Director, Tenants Right Program, American Friends Service Committee;

Mr. and Mrs. Allen Hoffard (Laura), 1422 V Street, SE, Washington, D. C. 20020;

William S. Johnson, Sr., 1236 Harvard Street, NW, Washington, D. C. 20009;

Julius Kaplan, 738 Longfellow Street, NW, Washington, D. C. 20011;

Kenneth S. Kovack, 1001 Connecticut Avenue, NW, Washington, D. C. 20036; Legislative Representative, United Steel Workers of America;

Albert Lannon, Jr., 1341 G Street, NW, Washington, D. C. 20005; Legislative Representative, International Longshoremen's & Warehousemen's Union;

Carole Leavitt, 1706 S Street, NW, Washington, D. C., 20009;

Marilyn Lerch, 1816 New Hampshire Avenue, NW, Apartment 908, Washington, D. C. 20036; Teacher;

Jonathan Lerner, 1826 Corcoran Street, NW, Washington, D. C. 20009; Students for a Democratic Society;

Jack Davis, 1826 Corcoran Street, NW, Washington, D. C. 20009; Students for a Democratic Society;

Mrs. Elizabeth Anne Newton, c/o Miss Stephanie Stilwell, 1484 Wyoming Street, NW, Apartment 3, Washington, D. C., 20009;

Myrtle Oliver, 1438 Iris Street, NW, Washington, D. C. 20012, Womens' International League for Peace and Freedom;

Jacklyn Potter, 120 Maryland Avenue, NE, Washington, D. C. 20002; Administrative Assistant, Womens' International League for Peace and Freedom;

Martha Powers, 20001 19th Street, NW, Washington, D. C. 20009;

David Rein, 711 14th Street, NW, Washington, D. C. 20005; Washington Area Committee for the Abolition of HUAC/HISC;

Ann Ricks, 1419 Chapin Street, NW, Washington, D. C. 20009; Corresponding Secretary, Washington Area Committee for the Abolition of HUAC/HISC;

Rev. Charlie Rother, 1620 S Street, NW, Washington, D. C. 20036; Chaplain, American University;

Mr. and Mrs. Ralph Russell (Margaret), 2930 Legation Street, NW, Washington, D. C. 20015; Treasurer, Washington Area Committee for the Abolition of HUAC/HISC;

Fred C. Samuelson, 12013 Viers Mill Road, Silver Spring, Maryland 20906; Washington Area Committee for the Abolition of HUAC/HISC;

Francois Somlyo, 1216 H Street, NW, Washington, D. C. 20005; Business Agent, Cooks, Pastry Cooks & Kitchen Employees, Local 209;

Lawrence Speiser, 1424 16th Street, NW, Washington, D. C. 20036; Director, Washington Office, American Civil Liberties Union;

Mr. and Mrs. Pulius Weisser (Ethel), 3923 McKinley Street, NW, Washington, D. C. 20015; Secretary, Washington Area Committee for the Abolition of HUAC/HISC (Mrs.)

Bill Woolf, 1756 Corcoran Street, NW, Washington, D. C. 20009;

Wisconsin:

Prof. David R. Luce, 2914 North Donner Avenue, Milwaukee, Wisconsin 53211; Philosophy, University of Wisconsin, Milwaukee; Wisconsin Civil Liberties Union."

Personnel and Leadership

In other reports we have repeatedly warned that mere membership in a Communist front organization does not necessarily imply that a member is pro-Communist. Front organizations are designed to attract the unwary liberal, and most fronts have succeeded in this respect. It is hard to conceive of a person of intelligence belonging to the Committee for Defense of the Bill of Rights under Rose Chernin's leadership, or to NCA-HUAC/HISC under Frank Wilkinson's leadership, however, without being fully aware of the real nature of these groups.

We have already indicated that the Committee for the Defense of the Bill of Rights operates to provide bail and legal talent for members of the radical Left. This, of course, includes anyone deemed valuable to the Communist movement. There have been instances where the International Labor Defense in California (forerunner of LACDBR), provided bail for a Stalinist Communist and then withdrew it when he became a Trotskyist Communist. (Testimony of Norman Mini, transcript, Los Angeles hearing, 1950.)

A contention frequently advanced by critics of HISC and other official investigating agencies in the domestic subversion field is that they are not needed, and that all of their activities should be handled by the Federal Bureau of Investigation. This assertion has deluded many uninformed people, but the truth is that the FBI is not permitted to make public disclosures of its findings, it has no power of subpoena, and it reports to no law-making body. Legislative fact-finding committees have served as sources of information to law-making groups, state and federal, ever since colonial days in the United States.

The theory behind the operation of these bodies is simply that they are invested with broad investigating powers, and their sole function is to provide accurate information which may or may not be the subject of subsequent legislation, to the bodies by which they were created. Their activity is not measured in the volume of laws their disclosures initiate, but rather in the extent and accuracy of the information they provide on the matters within their jurisdiction.

Another complaint often made by Communist front organizations in general, and the one under discussion in particular, is against what has become known as "guilt by association," and a word concerning this propaganda device might not be amiss at this point. There is nothing inherently abhorrent about this term—although the radical Left has sought to give it a connotation of something evil. It is nothing more than the principle of a man being known by the company he prefers to keep, as he is known by his personal habits, the clothes he wears, the books he reads and the organizations to which he belongs. He does these things by his own freedom of choice. The law has long taken cognizance of this in its provisions concerning conspiracy. If a man chooses to support the American Nazi Party, Minutemen, Ku Klux Klan, and States Rights Party—all militantly Right organizations, and he reads Fascist literature consistently, supports Nazi Party candidates for public office, and attends meetings featuring Gerald L. K. Smith—that is working one side of the ideological street, and the Communist front organizations would be the first to attack such a person as an activist of the radical Right. If he chooses to follow the same pattern with persons and organizations of

the extreme Left, he is free to do so, but he cannot escape the fact that his tendencies and habits will be judged by his actions and his associations. It certainly would not mean that the man was either a member of the American Nazi Party or the Communist Party, but his support of these organizations of the extreme right or left would most assuredly indicate his sympathy for one or the other extreme ideology. Formal membership in subversive organizations is quite another matter and requires a vastly different sort of evidence. At this point, and in the light of what we shall say about the leaders of NCA-HUAC/HISC, it is also appropriate that we should point out the meaning of the term "identified Communist." By that term we refer to unrefuted sworn testimony concerning a person's membership in the Communist Party by a witness or witnesses who served in the organization with the person under discussion. Obviously, no Communist Party member is happy at being exposed in his undercover and subversive activities by witnesses before legislative committees; hence, the vituperation and campaigns of abuse that have been waged against undercover operatives for federal and state governments; and it is equally clear that the abolition of legislative committees, state and federal, would enable the Communist Party to operate with greater freedom and security.

We have already explained the Communist Party membership of Mr. Frank Wilkinson, the National Executive Director of NCA-HUAC/HISC, and the fact that he served a term in a federal penal institution for contempt of the House Committee. It remains to discuss briefly the Communist affiliations of some of the other leaders of this organization, in order to remove any doubt concerning the real control of its operations.

Richard Criley graduated from the University of California at Berkeley in 1934, and thereafter became an official of the Young Communist League in the East Bay area. He has been identified as a Communist by four witnesses who were in the Party with him and who testified before the House Committee. He was a speaker at the 1938 California State Communist Party convention, and was expelled from Local 26, United Packing House Workers of America, because of his Communist activities. At present he is Secretary of the Midwest Regional

office for NCA-HUAC/HISC, at Chicago, Illinois. (See HUAC report, July, 1954; See report, *Congressional Record,* May 3, 1961, page 4.)

The NCA-HUAC/HISC continues to flourish pursuant to its expanded objectives, and a familiarity with its leaders, officers, and sponsors removes any lingering doubt about the fact that this organization is under complete Communist Party domination, and has been so since it came into existence in 1960. Indeed, no sooner had the House Committee been established in 1938 than the Communist propaganda machine was set in motion to hamper its investigations and bring about its abolition. *(The Communist,* Sept., 1938; Proceedings, 14th National Convention, Communist Party of the United States, New York, August 6, 1948.)

The *Daily Worker,* May 25, 1950, describing a session of the National Committee of the Communist Party, U. S. A., on May 22 and 23, 1950, stated that:

> "Joe Brandt, who is now in charge of the defense campaign of the Party, then reported that the Non-Partisan Committee for the Defense of the 12 Communist leaders and the Civil Rights Congress are planning activities for the Abolition of the Un-American Committee."

This official declaration by the Party heralded the creation of the NCA-HUAC/HISC, as we have explained. The National Chairman, Harvey O'Connor has been identified as a member of the Communist Party, (HUAC report, October, 1962) so has Frank Wilkinson, its Executive Director, Richard Criley, who heads its midwest region, and Carl and Anne Braden who operate in its southern region. Space will not permit, nor would any real purpose be gained, by setting forth here, the detailed Communist Front activities of all the other officers and sponsors of the organization. Although it has found more support among its contacts outside of Congress than in the House of Representatives of that body, it continues to operate more energetically than ever.

NATIONAL COMMITTEE TO ABOLISH HUAC
EXHIBIT I

Citizens Committee to

PRESERVE AMERICAN FREEDOMS

555 N. WESTERN AVENUE • *Mailing Address:* P.O. BOX 74757 • LOS ANGELES 4, CALIF. • HOllywood 2-1329

January 14, 1966

TO ALL MEMBERS OF THE EXECUTIVE BOARD AND SUSTAINING CONTRIBUTORS OF THE CITIZENS COMMITTEE TO PRESERVE AMERICAN FREEDOMS:

The CCPAF Executive Board held two special meetings on January 3rd and 8th to discuss proposals to improve the work in the Southern California area of the national campaign to abolish HUAC.

The following proposals were agreed to and are now presented for your consideration and vote:

1) The Citizens Committee to Preserve American Freedoms (CCPAF), be dissolved.

2) A new organization to be known as "Southern Californians To Abolish the House Un-American Activities Committee" (SCAHUAC), be established. The letterhead and literature of the new organization would carry the following information:

   a) "Formerly, Citizens Committee to Preserve American Freedoms"; and

   b) "Affiliate: National Committee to Abolish the House Un-American Activities Committee"

3) The Executive Board of the new organization (SCAHUAC) would consist of all present members of the Citizens Committee to Preserve American Freedoms' Executive Board who wish to continue on the Board, and one or more representatives to be invited from each Congressional District in Southern California.

4) The new organization (SCAHUAC) would be responsible for all funds raised in Southern California for the HUAC abolition campaign; develop a budget; and allocate funds for local and national abolition work. First claim on funds raised by the new organization would be for payment of the salary of the national executive director (Frank Wilkinson) and for the overhead (rent and telephone) of the national office in Los Angeles of the National Committee to Abolish the House Un-American Activities Committee.

5) The new organization (SCAHUAC) would select a staff person, voluntary or paid, to work on a part-time or full-time program to coordinate Congressional District activities, education work, fund raising, and other duties the organizations would establish to further the HUAC abolition program in Southern California.

The present Executive Board of the Citizens Committee to Preserve American Freedoms will continue until such time as the above proposals can be acted on. Five members of the present CCPAF Board were named to implement the above program, if approved. Dorothy Marshall, Chairman; Reverend Stephen H. Fritchman; Raphael Konigsberg; Betty Rottger; and Vic Shapiro; - Frank Wilkinson, ex officio.

Please mark the enclosed Ballot and return in the enclosed addressed and stamped envelope, - no later than January 25th

DUE TO THE ILLNESS OF DOROTHY MARSHALL, CHAIRMAN:
Submitted by:

BETTY ROTTGER
Office Coordinator

NATIONAL COMMITTEE TO ABOLISH HUAC
EXHIBIT I—Continued

CITIZENS COMMITTEE TO PRESERVE AMERICAN FREEDOMS

- B A L L O T -

In regard to the proposals to improve the work in Southern California of the national campaign to abolish HUAC, submitted on behalf of the CCPAF Executive Board by Betty Rottger on January 14, 1966, I vote as follows:

☐ I approve

☐ I disapprove

Note: In addition to the proposals submitted by the Executive Board, your own suggestions regarding ways and means of improving the HUAC abolition campaign in the Southern California area are most welcome.

MEMBERS OF THE CCPAF EXECUTIVE BOARD:

If the proposals to dissolve the Citizens Committee to Preserve American Freedoms and establish a new organization to be known as "Southern Californians For the Abolition of the House Un-American Activities Committee", are approved:

I wish to continue as a member of the Executive Board of the new organization ☐

I am unable to continue as a member of the Executive Board of the new organization ☐

NAME _____

NATIONAL COMMITTEE TO ABOLISH HUAC
EXHIBIT II

PETITION—CONTRIBUTE TO ABOLISH HUAC

URGENT!

NATIONAL COMMITTEE TO ABOLISH HUAC

☐ Enclosed is my petition in concurrence with the constitutional law authorities. Please present it to my Representative before Congress convenes on January 4, 1965. Please send me _____ more copies.

☐ Enclosed is $_____ as my contribution toward the National Committee's campaign to abolish HUAC.

(Make checks payable to ROBERT W. KENNY, Treasurer)

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

Honorary Chairmen
JAMES IMBRIE
ALEXANDER MEIKLEJOHN
CLARENCE PICKETT

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Chairman
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555 North Western Avenue #2 / Los Angeles 4, Calif. / HOllywood 2-1329

NATIONAL COMMITTEE TO ABOLISH HUAC
EXHIBIT III

Southern Californians to Abolish HUAC/HISC

[House Committee on Internal Security]

AFFILIATE OF NATIONAL COMMITTEE TO ABOLISH THE HOUSE UN-AMERICAN ACTIVITIES COMMITTEE

555 N. Western Avenue, P.O. Box 74757, Los Angeles, California 90004, 462-1329

SPONSORS
(Titles and Institutions Listed for Identification Only)

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Nina Byers
Physicist
Prof. Vern L. Bullough
History, Valley State College
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Speech, L.A. Valley College
Prof. Frank B. Cannonito
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Jeanne Caya
Annette Cimring
President, Council, Women for Legislative Action
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Women Strike for Peace
Rabbi William Cutter
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Program Coordinator, UC Extension
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Lawrence J. Sherman
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Chemistry, Univ. of Calif., San Diego
Cliff Vaughn
Chairman, L.A.-SNCC
Prof. Karl With
Art, UCLA

200

Oppose the SACB Hearings in Los Angeles

The first witch hunt in Los Angeles since 1962 has been set for next Tuesday - June 17th!

Acting under HUAC/HISC's revived Internal Security Act, the Subversive Activities Control Board has selected Los Angeles for its first "hearing" outside of Washington.

Your Southern Californians to Abolish HUAC/HISC warned and informed regarding the threat to our liberties under the new Act. After several decisions of the Supreme Court of the United States had declared the original law to be unenforceable and unconstitutional, we helped organize opposition to the HUAC/HISC scheme to nullify the high court decisions and revive the Act.

Los Angeles' leading clergymen, a score of our professors of law, and over one thousand other citizens petitioned against the revived Act. 12 Southern California Congressmen voted against reviving the Act.

But we lost. The Act was revived.

Now, the Nixon Administration has moved to use the new law as part of their arsenal of repression. Deputy Attorney General Richard Kleindienst has announced that the Justice Department is "not just going to keep" the Act alive, but would "give it momentum."

The enclosed literature speaks for itself.

We must act. We urge you:

1 - Wire your Congressmen to ask the Justice Department to stop proceedings until the Supreme Court can again rule on its constitutionality; - and to introduce legislation to repeal the revived Act, and its corollary concentration camp provisions!

2 - Come down and join the picket line in front of the old Federal Building (312 N. Spring Street) - from 10 a.m. to 4 p.m. next Tuesday, June 17th!

3 - Use the enclosed envelope to contribute to SCAHUAC/HISC's special expenses in connection with our education - action campaign against the SACB witch hunt!

In Pursuit of First Amendment Principle To Abolish Inquisitorial Committees & Oppose Repressive Laws

THE COMMUNIST PARTY, U.S.A.

The National Party

The Communist Party of the United States was created from the left wing of the Socialist Party at a Chicago convention in September, 1919. Thereafter it perfected its organization over a period of five years, always recruiting on a highly selective basis rather than attempting to build a large mass revolutionary organization. At first the country was divided into districts, California, Arizona and Nevada comprising District 13 with headquarters in San Francisco. A few years ago this designation was dropped, and District 13 thenceforth comprised California, Arizona and Hawaii, and still more recently California achieved a significance that entitled it to have a Communist organization of its own, divided into Northern and Southern districts, which will be examined in detail later.

It is difficult to convince people of how the Communist Party, a relatively small organization, can exert an enormous influence far out of proportion to its numerical strength. This is achieved, of course, because of its elaborate network of front organizations, its smoothly-functioning propaganda machinery, its highly disciplined and trained membership, its function as a part of an international Communist movement, its dual structure of above and below ground organizations, and its vast support from fellow travelers, members at large, sympathizers, and so-called "sleepers", or those persons under Party discipline who are placed in sensitive positions and who remain dormant until they are called upon to perform a service for the Party.

The Director of the Federal Bureau of Investigation stated in 1965 that "few things would give the Communist Party, U.S.A., more comfort than a widespread underestimation of the menace which it presents to the internal security of the Nation." (Testimony, Hearing before House Subcommittee on Appropriations, March 4, 1965.)

The present National Head of the Communist Party in this country, Gus Hall, had expressed his views concerning the Federal Bureau of Investigation on several occasions. Two years before Mr. Hoover's testimony, Hall had declared: "We Communists are well acquainted with the unlawful, degenerate activities of the F. B. I. We know about their business of lying, of manufacturing evidence, illegal tapping of telephones, illegal breaking into homes, their practice of intimidation and coercion, about the method of keeping a file on all public officials and using them to assure huge appropriations for itself and to keep an atmosphere of fear so there is no criticism of its activities." (*Communist Viewpoint,* official Communist publication, Vol. I, Nos. 5 and 6, 1963, page 3.)

Mr. Hall also made a significant statement, perhaps in an unguarded moment, when he declared: ". . . I think that we are a bigger factor in American life than most people want to recognize or even fully appreciate." (Mike Wallace interview, Dec. 28, 1959, transcript, page 83.)

The national headquarters for the CPUSA is situated in a drab brick building at 23 West 26th Street, Room 305, New York City. For security reasons, however, little important business is transacted there, the affairs of the organization being conducted from the residences of its leaders, and records concerning membership and payment of dues no longer being maintained at a central location by written record, but rather by subordinate Party units throughout the country, and, if reduced to writing at all, kept in code. No membership books, cards, or other written indications of membership have been issued by the Party since December, 1947, which renders the phrase: "Card-carrying Communists" obsolete.

Spokesmen for the Party would like to have us believe that it operates wholly independently from the headquarters for the international Communist movement in Moscow, that it advocates a transition from our present form of government to Communism by education and peaceful persuasion, that it abhors force and violence, and that its great concern is the preservation of world peace.

The fact that the Communist Party of the United States is an integral part of the world Communist move-

ment, with the ideology, the experience, the strategy, the discipline, the dedication, and the energy that flows to it from the longevity of its operation and its ties with foreign organizations, sets it apart as distinct and far more dangerous than all of the other domestic subversive organizations combined. As one expert has put it:

> "In one very important respect, the American Communist Party differed from all political organizations that had preceded it in American history. This was its connection with the world Communist movement, making the local Party a piece of political and administrative apparatus in a larger structure of international organizations, managed from the Soviet Union." (*The Communist Controversy in Washington*, by Earl Latham. Harvard University Press, Cambridge, Massachusetts, 1966, page 19. Dr. Latham is chairman of the Department of Political Science at Amherst College.)

We have frequently described the organizational structure of the CPUSA, and have no intention of repeating the detailed explanations concerning it that have appeared in previous reports. It is, however, necessary to know that the most populous states such as California and New York are allowed to have their own Party organizations, subordinate to the national body, and that the less populous states are sometimes grouped together to form districts. Nationwide activities are conducted by a Secretariat of the National Committee. This is an exact duplicate of the Soviet system, in which a Central Committee is operated by a political bureau, and that organization is run by a Secretariat. Both in the Soviet Union and in the United States, the General Secretary is the highest official in the Communist organization. There are also numerous commissions, such as commissions on labor, racial minority groups, youth, agriculture, and the like. The whole system operates under a principle which is designated as Democratic Centralism. This is supposed to mean that the decisions are made by the membership-at-large, conveyed to the top leadership, and by it placed into operation. Actually, however, the exact reverse has been true in practice. The decisions are made at the top and transmitted through various subordinate function-

aries to the state and district organizations and then implemented by action at these lower levels. Any criticism of the world Communist line as announced from the Soviet Union is summarily squashed, dissident members are expelled, discipline from the top is rigid and punitive, and this deviation from the democratic principle has, as we shall see, caused deep rifts in the Party membership.

In previous years we have devoted much attention to the Communist educational systems through its network of schools, its propaganda outlets, its underground apparatus, its "special sections" devoted to espionage, and its system of communicating with foreign Communist Parties by sending delegates to international front organization meetings, and by means of couriers.

National Leadership

The late William Z. Foster, a militant trade union organizer, Earl Browder and Gus Hall are the three general secretaries of the Communist Party of the United States who are widely known. Foster led the Party in its great crusade to infiltrate and dominate key trade union organizations in this country; Browder was more intellectually inclined, wrote extensively, and was eventually expelled from the Party because he was deemed insufficiently militant. The present leader of the CPUSA is Gus Hall, and since he virtually dictates the activities of the national organization, and because we have not devoted sufficient attention to him in the past, and because of his frequent appearances in California, we will examine his background and activities at some length.

The General Secretary, CPUSA

Gus Hall was born Arvo Kusta Halberg, October 8, 1910 in Minnesota. He worked as a lumberjack and a steel worker, served in the U.S. Navy for 14 months, and became a member of the young Communist League when he was approximately 16 years of age. Characterized by a tough, blunt and active attitude, Hall rose rapidly in the ranks of the Communist Party, had his name legally changed to the one he now uses, and was soon functioning in Ohio as a Communist Party official and an organizer in the steel industry. He spent several

years attending the Lenin School in Moscow, where he roomed with Leonard Patterson, a former member of the Communist Party who has testified extensively concerning their activities in the Soviet Union.

In the Lenin School, Hall learned about street fighting, the use of explosives and other revolutionary techniques. It would appear, of course, that if the CPUSA spoke the truth when it insisted and still insists upon its peaceful attitude and its opposition to violence, it would have been superfluous to teach the American students at the Lenin School a sophisticated technique in blowing up buildings, bridges and other public works. Hall returned to the United States and lost little time in putting his lessons to the practical test. As a leader of the Steel Workers' Organizing Committee, he ran a strike in Ohio against the Republic Steel Corporation. Lester Abele was at the time adjutant for the 73rd Brigade, Ohio National Guard and was a speaker for the Ohio House of Representatives. His testimony concerning Hall's activities in the strike was detailed before the Senate Internal Security Subcommittee, February 2 and 3, 1960, pages 25, 26, 27:

> "We obtained the confessions of an Arthur Scott, and also John Borawies, and George Bundas. The gist of the confessions was this, that Gus Hall was the leader of the group who obtained, or sent for and obtained, dynamite and nitro-glycerin . . . the orders of Gus Hall, according to these confessions, were to blow up and destroy the property of the Republic Steel Corp., homes of non-striking workers; railroad property, including tracks and bridges. They were to blow up the huge tanks, holding perhaps a quarter of a million gallons of highly volatile benzol on the property of the Republic Steel Corp. They were to blow up the Municipal Electric Light plant in Warren. They were to destroy the power transformers near the steel plant. The Meander Dam . . . was to have been blown up. There were plans to fly over the steel plant shops in an airplane and drop bombs."

When Hall appeared before the subcommittee and was asked to comment on or refute any of these charges, he

refused to do so, claiming the protection of the Fifth Amendment.

Edward J. Herzog, former undercover member of the Communist Party, also has testified that he had knowledge of Hall directing the attacks against the strike-bound corporation, and that Hall "told the boys to go to Oil City and bring back some nitro-glycerin . . . there were rifles, shotguns, clubs, ballbats, pieces of pipe, pieces of old sickle onto clubs, and a couple of tommy guns . . . there were about 3 gallons of nitro-glycerin in the headquarters at that time, and Gus told Art Scott to get the crew together and go down and blow out the bridge across the plant . . . and to take another lot out and blow up the benzol plant. They had approximately a quarter of a million gallons of volatile benzol. Gus gave them orders to go out and blow up the benzol plant." (Testimony of Edward J. Herzog, Senate Internal Security Subcommittee, February 2 and 3, 1960, page 27; see also Testimony of Leonard Patterson, Senate Internal Security Subcommittee Report, op.cit., pages 14, 35–46.)

An indication of Hall's early attitude toward revolution in the United States is seen in an excerpt from the transcript of his testimony in the case of Minnesota v. Halberg, et al., 1934, as follows:

> " . . . the working class elements of the Army and Navy will fight with the workers and farmers when the time comes. Q. You mean that certain traitorous gentlemen in the Army and Navy will join with you in overthrowing the Government? A. Absolutely."

A convincing example of the duplicity of Communist leaders, and their slavish devotion to the inconsistent turns and twists of the international party line, is seen when, during an interview by Mike Wallace, referred to above, on December 28 1959, Hall said: "Mao Tse-tung is a Communist and stands for peace." (Transcript of Mike Wallace interview.) But, writing in the theoretical publication of the National Committee of the CPUSA, October 1963, Hall declared that: " . . . the conflict, it is clear, has now gone far beyond ideological disputes between Communist parties, and has taken on the character of all-out warfare by the Communist Party of China

against the fundamental views and policies of the rest of the international Communist movement. . . . nor is the Chinese leaders' assault on the party (CPUSA) confined to this. The editorial (by Mao in the *Peking Review,* Aug. 1963) states that 'there are not a small number of genuine Communists, both inside and outside the Communist Party of the United States, who firmly adhere to Marxism-Leninism and oppose Revisionism and Dogmatism.' It expresses the highest hopes for these Revolutionary Marxists-Leninists in the United States. And who are these 'genuine Communists'? Obviously, these individuals who oppose the ideological position and policies of our Party and support those of the CPC, [Communist Party of China.] And what is this pronouncement, if not encouragement to such elements 'both inside and outside' the Party to work to undermine and destroy it? In fact, it is no secret that the Chinese party gives support and encouragement to anti-Party splinter groups, led mainly by individuals who have been expelled from the Communist Party, to carry on such activities. Thus, to the deliberate falsification of our position, and to slanders about following the Soviet baton, the CPC adds its direct support of anti-Party elements working to disrupt and wreck the Party." (Editorial, *Political Affairs,* October, 1963, pages 18 and 19.) And this was published before the leader of the Chinese Communist, Mao Tse-tung, whom Hall had described as "a Communist who stands for peace," sent his armed forces to open fire on Soviet troops in the sensitive border area between the two countries. Afterwards, Hall reversed himself and said:

> "As for Chinese-Soviet relations, matters have worsened. The armed border attacks on the Soviet forces were due to the Mao dictatorial leadership, which is following a path of rank nationalism and great-power chauvinism. *Anyone who knows the policies of the Soviet Union and of Mao cannot but conclude that the provocation is from the side of the Chinese* (Our italics.) The Mao leadership has deliberately aggravated the Soviet-Chinese relations and further whipped up nationalist and chauvinist feelings, either to interfere with the progress of the coming World Conference of Communist and Workers'

Parties, or to bring about conditions intended to interfere with the advance of the Soviet Union." (*The Revolutionary Process,* by Gus Hall, Report to the 19th National Convention of the Communist Party, U.S.A., by its General Secretary. New Outlook Publishers, 32 Union Square East, Room 801, New York, NY 10003, June, 1969.)

Communists have become accustomed by long practice to these bland contradictions that appear foolish to others. They declare themselves opposed to force, except against the establishment that is so misguided as to resist their efforts to destroy it. They are for peaceful co-existence, so long as it fits the Communist plan for world domination. It opposes "imperialist wars", but "peoples wars" are justifiable. It practices "democratic centralism" so long as there is no opposition to the ruling hierarchy, and if there is, the dissidents are summarily liquidated. Stalin was acclaimed as an infallible saviour until he died and was attacked by a successor, then after more than a quarter of a century of adulation he suddenly became a monster. Our former Secretary of State, Dean Atcheson, has stated: "The Russian idea of negotiation is carrying on war by other means." (Televised statement to Eric Severeid, September 28, 1969.)

Unless one understands this natural duplicity, which is inherent as breathing to Communists, one is simply not equipped to comprehend their deadly day-to-day menace to our society. It enabled diplomatic representatives of the USSR to deliberately lie to us concerning the nuclear missiles in Cuba—for, in Marxian concept, this is simply a weapon in the inexorable progress of their drive toward world domination.

The late Robert F. Kennedy has vividly described this incredible deception:

> ". . . on September 11, (1962), Moscow disclaimed publicly any intention of taking such action and stated that there was no need for nuclear missiles to be transferred to any country outside the Soviet Union, including Cuba.
>
> During this period of time, an important official in the Soviet Embassy, returning from Moscow, brought me a personal message from Khrushchev

to President Kennedy, stating that he wanted the President to be assured that under no circumstances would surface-to-surface missiles be sent to Cuba.

Now, as representatives of the CIA explained the U-2 photographs that morning, Tuesday, October 16, we realized that it had all been lies, one gigantic fabric of lies. The Russians were putting missiles in Cuba, and they had been shipping them there and beginning the construction of the sites at the same time those various private and public assurances were being forwarded by Chairman Khrushchev to President Kennedy." (*Thirteen Days, A Memoir of the Cuban Missile Crisis,* by Robert F. Kennedy. W. W. Norton and Company, Inc., N.Y., 1969, page 27.)

International Connections

The Communist movement is a drive against all non-Communist societies. It has always been a global movement, with close connections between the various parties, and all led by the USSR. In the beginning the parties were commanded and monitored by Comintern representatives, Soviet agents sent abroad by the Communist (third) International in Moscow. This central organization was divided into sections that specialized in the infiltration of labor organizations, the provision of legal aid to Party members, and agitation and propaganda.

In the face of massive evidence to the contrary, American Communists have largely succeeded in their determined campaign to clothe the Party with a certain aura of respectability. At the same time, the propaganda against the FBI and other authoritative sources is calculated to discredit all evidence concerning the subversive nature of the CPUSA. Thus among students and younger members of faculties of our educational system, we find a new and growing acceptance of and accommodation with Communists, and a refusal to accept evidence against them. This attitude is by no means universal, but it is growing—a fact made evident by a recent resolution by the Statewide Academic Senate of the University of California, urging repeal of the prohibition against the employment of Communists on the faculties of the nine campuses of that State-supported institution.

A little monthly magazine called "*Political Affairs*" is the publication of the National Committee, CPUSA. It is about the size of Readers' Digest, but assuredly has no other resemblance to that magazine. It makes dreary reading, but it does accurately carry both the world and national Party line. In the issue for August 1949, page 29, it declared that "in their fight for unity the Communists have a tested weapon. It has brought victory in glorious battles for the cause of the working class, for Socialism. It is proletarian internationalism."

Gus Hall also has had something to say about the international connections of the Communist Party, and in the April, 1969, issue of *Political Affairs*, he wrote:

> "The CPUSA disaffiliated from the CI (Communist International) sometime before the International was discontinued. This 'disaffiliation' was not only because of anti-Communist laws. It was motivated by the opportunistic, deep-seated Browder revisionist trends that had already set in. The act of 'disaffiliation' from a world organization only added fuel to the fires of opportunism and revision."

This excerpt, in which Hall places the word "disaffiliation" in quotation marks, can only mean that the purported break from the international organization was a quotation-mark-break only, not a real one, and that it also was a mistake. If so, then bearing in mind that Hall, not Browder, now heads the CPUSA, one may assume that he has taken appropriate steps to correct this error.

Among the departments of the Secretariat in the Foreign Department of the Soviet Union, one has jurisdiction over "registration and allocation of international cadres, ministry of foreign affairs; communications and *controlling contacts with foreign Communist Parties; foreign Communist Parties in non-Communist Countries;* (our italics) World-wide Communist Trade Union Movement; 'Fighters for Peace;' World-wide Communist Youth Movement (The 'Festivals'); Periodical Problems of Peace and Socialism." (*The Communist Party Apparatus,* by Abdurakhman Avtorkhanov, Henry Regnery Company, Chicago, published in cooperation with Foundation for Foreign Affairs, Inc., 1966, pages 204–205.) The author is a former member of the Communist Party

of the Soviet Union, ex-chief of its organization bureau, Chechen region Party Committee, and head of the Communist publishing house, and a graduate of the Institute of Red Professors in 1937. He is also a founder of the Munich Institute for the Study of the USSR, and Professor of Political Science at the U.S. Army Institute for Advanced Russian Research. In 1966, the Soviet Communist functionary who was in charge of the "contacts with foreign Communist parties and foreign Communist parties in nine Communist Countries," was Yuri Ponomarev, and so far as we know, he still occupies that position.

There is also a network of international fronts, some of the more important ones being the World Federation of Trade Unions, the World Federation of Democratic Youth, International Juridical Association, World Federation of Democratic Writers, and the International Union of Students. The latter organization has its headquarters at Vocelova III Prague II Czechoslovakia. It, in turn, is connected with radical youth groups throughout the world. Some of them are the Bolivian University Federation, National Union of Students of Brazil, National Council of Colombian Youth, All-India Student and Youth Federation, Confederation of Iranian Students, Coalition of Teachers and Struggle Committees of Mexico, General Union of Palestinian Students, University Students Federation of Peru, Federation of Uruguayan University Students, Japanese Zengakuren, Porto Rican University Federation, and, of course, the several Marxist radical youth groups in the United States. (International Student Union *News Service Bulletins,* 1968, 1969, 1970.)

The Bulletins of the International Union of Students are sent to educational institutions throughout the world, with heavy saturation in the United States. They are propaganda media that not only serve to disseminate information concerning student radical demonstrations and activities in other countries, but also to distribute the most blatant propaganda attacks against the United States, its armed forces, its constituted authorities, and its educational institutions. The American delegates are sent to the ISU meetings, such as those held jointly by the World Federation of Democratic Youth and the International Union of Students at Czechoslovakia during September and October, 1967.

Gus Hall, the head of the CPUSA, has repeatedly stressed the need for more international solidarity. At the Consultative Conference of Communist and Workers' Parties at Budapest, February 28, 1968, he declared that: "The new level of the military struggle in Vietnam must be watched by a new level of political, ideological and diplomatic struggle in every continent in every country, in every city and hamlet the world over . . ." (*Political Affairs,* April, 1968, page 1.) The demonstrations, racial troubles, bombings, rebellions of students, attacks against moderates and conservatives are faithfully reported and encouraged in this massive flood of propaganda material that flows into our schools from a variety of the world Communist front organization networks. At the same time an attack is levelled against our police, our National Guard, and our confidence in the Armed Forces of the United States.

A World Seminar on National Liberation was held at Alma-Ata, capital of the Soviet Republic of Afghanistan, October 1–7, 1969. An account of the conference is printed in *Political Affairs* for February, 1970, page 20. More than 100 delegates attended, conferring on matters of revolution and propaganda techniques, and the personnel included "liberation fighters from Africa, Asia, South America, the Middle East and from the United States."

From February 21 to 28, 1969, representatives of National Student Unions from 37 countries and two international organizations attended the Executive Committee meeting of the International Union of Students at the seaside resort of Varna, Bulgaria, where exchanges of information and experiences were made through representatives travelling from these foreign countries, which included the United States. (*ISU News Service,* Nos. 7–8, April, 1969.)

A few years ago our Government denied passports to representatives of domestic subversive groups, but decisions by the Supreme Court struck down the last restrictions, and now we sit helplessly by while agents of the Communist Party of the United States, Students for a Democratic Society, Progressive Labor Party, Socialist Workers' Party, and other Marxian organizations travel freely back and forth to Cuba and other countries, returning with fresh instructions, fresh training, and re-

newed dedication to work for our destruction. At the same time the Students for a Democratic Society, despite its announced plan to destroy our Government by force and violence, is accorded official recognition on our state-supported campuses, and Communist speakers are allowed free use of our state-owned facilities to indoctrinate the students and incite them to defiant rebellion.

In the face of this, the CPUSA has the effrontery to insult our intelligence by telling us that it has no organizational connections abroad, that it seeks to accomplish our overthrow by a nonviolent means. We have neither the space nor the inclination to clutter this report with more examples of these international connections, since any effort to describe all of the global fronts would require a volume.

One other such organization should be mentioned, however, and that is the World Peace Council which is based in Vienna, and although it numbers many non-Communists among its members, it is operated by an Executive Bureau that has always been under Communist control, *(World-Wide Communist Propaganda Activities,* F. Bowen Evans, Ed., the MacMillan Company, New York 1955, pages 112–116.) Members of other fronts staff the important offices of the World Peace Council, and many of them are from the World Federation of Trade Unions, the Womens' International Democratic Federation, the World Federation of Scientific Workers, and the International Association of Democratic Lawyers. The organization has met in Vienna, East Berlin and Stockholm—the most recent meeting in East Germany having been described briefly in connection with the two visits to that affair by Irving Sarnoff, Chairman of the Peace Action Council.

We have described a few of these organizations to dispel any notion that the CPUSA operates in isolation and makes its own decisions in complete independence of the rest of the world Communist movement. And, obviously, with delegates constantly traveling from one to another of these far-flung fronts, there is a continuous interchange of information, and a continuous correlation of propaganda and activity.

Force and Violence

The CPUSA has consistently insisted that it never advocates the use of force and violence to accomplish its revolutionary objectives. This contention not only appears in its publications intended for the general public, but is also hammered home to its rank and file members at club meetings. But if the attempt to subvert us meets with forcible resistance, then, according to Communist ideology, they must reluctantly resort to force and terror which is made necessary by the class enemy—us. The use of violence then becomes the fault of the existing regime instead of the forces that rise in revolution to overthrow it. (Marx and Engels, *Selected Works,* Foreign Languages Publishing House, Moscow, 1951. Vol. I, pages 45, 46, 54, 62, 65.)

There can be little doubt about the attitude towards the use of force and violence and revolutionary activities on part of the Soviet Union. A few authoritative sources will suffice to settle that matter, and beginning with the doctrines of Marx and Engels we find these principles continued by Nikita Khrushchev in his report to the 20th Congress of the Communist Party of the Soviet Union:

> "While noting that the possibility of a peaceful resolution has appeared, Marxists-Leninists are at the same time aware of the fact that in a number of cases a sharp accentuation of the class struggle is inevitable. Wherever the reactionary bourgeoisie has a strong army and police force at its disposal, the working class will encounter fierce resistance. There can be no doubt that in a number of capitalist countries the overthrow of the bourgeois dictatorship will inevitably take place through an armed class struggle." *(Report to the Central Committee of the Communist Party of the Soviet Union,* by Nikita Khrushchev, 20th Congress.)

Khrushchev reiterated this principle in an article which appears in the *World Marxist Review,* as follows:

> "Marxism-Leninism starts from the premise that the forms of the transition to Socialism may be peaceful and non-peaceful. It is in the interests of the working class of the masses, that the revolution be carried out in a peaceful way. But in the event

of the ruling classes resisting the revolution with violence and refusing to submit to the will of the people, the proletariat will be obliged to crush their resistance and launch a resolute civil war." (*World Marxist Review*, January 1961, page 23.)

Leonid Brezhnev, who now occupies the position formerly held by Khrushchev, perpetuated this principle when he declared to the 23rd Congress of the Soviet Communist Party:

> "It goes without saying that there can be no peaceful co-existence where the internal processes of the class and national-liberation struggle in the capitalist countries or in the colonies are concerned. Peaceful co-existence is not applicable to the relations between the oppressor and the oppressed, between colonialists and the victims of colonial oppression." (*Brezhnev Report to the Central Committee of the Communist Party of the Soviet Union*, 23rd Congress, *World Marxist Review,* Canada, May 12, 1966, page 29.)

An example of the use of a state-supported educational institution for the purpose of providing instruction and enthusiasm for forcible overthrow of government, is seen in the Experimental College at San Francisco State College, in 1967–1968. The course was entitled "Institute for Social Change in Latin America," in 1967. In 1968, however, it was called "Guerrilla Warfare." The instructor was a man who called himself Major Roberto Kaffke. The first 1968 course commenced on Tuesday February 22, and was attended by a gathering of approximately 125 students. Revolutionary experts other than Kaffke were brought in to deliver some of the other lectures. The subjects were listed as: "The Ghetto Uprisings, Intelligence Operations, Sandino Campaign, Urban Warfare, Weapons and Demolitions, Counter-Insurgency Tactics, and Perspectives of Revolution in America." (San Francisco State College *Daily Gater,* February 23, 1968, page 7.)

Kaffke said that the "prospects of revolutionary warfare begins" with urban war. War in the cities would be followed by mountain warfare, mobile field warfare,

seizure of State power and the establishment of a new Government.

Kaffke asserted that he was an honorary member of the Nicaraguan Liberation Front and was therefore well prepared to brief his class on the theory and tactics of Guerrilla warfare. He was also said to be a veteran of World War II and of the conflict in Korea, where he was a member of the United States Army Combat Engineers. (*Daily Gater,* op. cit.)

He was better known in San Francisco for his participation in various demonstrations in 1963 and 1964, and was one of the Bay area students who defied the United States Department of State when he went to Cuba in 1963, and when he was arrested for the demonstration at the Sheraton-Palace Hotel in San Francisco in March, 1964. At that time he was 36 years of age, and had resided at 3030 Regent Street, Berkeley, and at 1054 Randolph Street, San Francisco. (See *Tocsin,* July 10, 1963; *San Francisco Chronicle,* September 20, 1963; *Tocsin*, March 18, 1964, pages 1–4.)

Some of his associates in the Bay area demonstrations were Bettina Aptheka, Nora B. Lapin, David L. Jenkins, Paul D. Richards and Stephen J. Kahn.

Courses in guerrilla warfare were also taught at the New Left School, which we have already described, and, as will be seen, at various other meetings of subversive organizations throughout the state and at forums and lectures at various educational institutions, all of which will be treated in detail in the appropriate succeeding portions of this report.

Party Affairs is a publication of the Communist Party of the United States, and is issued from 23 West 26th Street, New York, 10010. The issue for April 30, 1969, page 10, carries a declaration by one of the youth clubs of the Party from Portland, Oregon, an excerpt regarding the use of force and violence being as follows:

> "Just as there is no argument that the international approach of the Party revolves around the notion of peaceful co-existence, there is no argument but that its approach to attaining Socialism in this country revolves around the notion of a peaceful parliamentary 'democratic struggle within the framework of the antimonopoly coalition'. Peaceful,

parliamentary and democratic as they are used in this perspective are related bits of opportunism and reformism that have almost nothing to do with the realities of the struggles taking place in this country."

In the John Burroughs Junior High School Auditorium, Sixth Street and McCadden Place, Los Angeles, a program on various aspects of violence was presented under the auspices of an organization, presumbably *ad hoc,* known as Discussion Unlimited. The program commenced on May 9, 1969 at 8:00 P.M., and the featured participants were Charles R. Garry, attorney for the Black Panthers; Jerome Cohen, attorney for the United Farm Workers Organizing Committee, headed by Cesar Chavez, and Terrance Hallinan, who was attorney for the Associated Students at San Francisco State University and who was one of the leaders in the founding of the DuBois Clubs of America.

John McTernin, a Los Angeles attorney, was chairman of the evening and the program announced that Mr. Garry would discuss "The Black and Brown Community;" Mr. Cohen, "Farm Workers;" Mr. Hallinan, "The Vietnam War," and that Mr. McTernin would preside as chairman of the evening. What the program neglected to state was that McTernin has been repeatedly identified as a member of the Communist Party of the United States, and that according to the program outlined in a folder the violence experienced in connection with the activities of the Black Panthers, the United Farm Workers Organizing Committee, the dissident students at San Francisco State University, and in connection with violence between police and demonstrators were all caused by the Establishment instead of by the radical demonstrators. (Folder and announcement of program, Discussion Unlimited, Inc., 7235 Woodrow Wilson Drive, Los Angeles, California 90028.)

Daniel Rubin put the matter in unmistakable terms when he submitted his paper entitled "How a Program Can Be Strengthened," as a preliminary to the new program for the CPUSA. He said, in part:

"On the possibility of peaceful transition, we should not speak in absolute terms of violence or

> no violence. There is violence now for which the ruling class is responsible, and we are likely to experience it in various forms and degrees from here on. Our aim, and at this distance it remains a possibility, is to prevent major violence, such as a civil war, from being precipitated by the ruling class. ("Discussion on Communist Draft Program," Daniel Rubin, *Political Affairs,* May, 1968, page 43 at page 52.)

In connection with Mr. Rubin's discussion, he pointed out the necessity for organizing and indoctrinating the liberal teachers and professional workers, saying that:

> ". . . Now a section of the New Left has drawn more positive conclusions about the working class. However, it contends that a single 'new working class'—teachers and other college-graduated professional workers—has become the leading sector, on the grounds these groups have the training to think theoretically and in broad terms and to work out a strategy for social progress."

Thus we see that from the very inception of the Communist movement, which originated with the promulgation of the Communist manifesto by Karl Marx and Frederich Engels in 1848, carried on through the Russian Revolution of 1917, implemented in savage warfare, oppression, tortures, slave camps, purge trials, and terrorism promulgated by a secret police in the Soviet Union, force has *always* been an essential ingredient of Communism. By virtue of the fact that this movement is global and revolutionary, and because it believes that the end justifies whatever means may be necessary to attain it, the record is replete with overwhelming evidence of underground organizations, fanaticism, and the constant practice of deceits and falsehoods, ranging all the way from the deliberate lies told to the late President Kennedy concerning the missile crisis in Cuba, to the current declarations of the CPUSA to the effect that it abhors violence, while the utterances set forth above show that this is merely a weapon in the subversive arsenal of Communism to lull us into a false sense of security.

Far from being the decimated, moribund organization it would have us believe, the Communist Party in this country has had an astounding revival, and has grown to exert a power that has enabled it to infiltrate and assume control of mass organizations such as the Peace Action Council, and the other organizations that will be dealt with later in this report. An adequate understanding of the present techniques and menace of the CPUSA is utterly impossible unless one also understands the record of its past performances. Such an organization, operating to a large extent in secrecy, its security precautions never greater than at present, can only be analyzed by a careful scrutiny of its techniques, its contradictory statements, its propaganda, its bookstore outlets, its indoctrination schools, the structure of its network of front organizations, and its basic literature. But it is only by a knowledge of the past that we can adequately prepare for the future, and unless we understand thoroughly such techniques as the use of the united front, the employment of the so-called "Diamond Pattern" by which a small group of Communists can infiltrate and take control of a far larger mass organization, we have simply not armed ourselves with the most fundamental and rudimentary weapons with which to combat this prime threat to our continued existence.

The Youth Division

The first Youth Division of the CPUSA was the Young Communist League, which was a subordinate group in the Young Communist International. This, in turn, was a division of the Comintern, and its headquarters was at Moscow. The late Paul Crouch, an active Party functionary for 17 years, was once a director of the YCL in the United States. Crouch was also an agent of ours for several years, as stated above.

During World War II, in a gesture to make the entire Communist organization less offensive to the United States, the CPUSA changed its name to Communist Political Association, and the YCL became American Youth for Democracy. Once the need for U.S. military aid ended, however, the CPUSA again became the name of the American Communist Party, and the name of its Youth Division became the Labor Youth League.

We devoted many pages of our 1965 report to the formation of the DuBois Clubs of America, that replaced the LYL, and it now remains for us to bring the subject up to date by describing the Young (Communists) Workers' Liberation League, the latest CPUSA youth organization. The DuBois Clubs never quite managed to attract radical youth. It started with a flourish after the Progressive Youth Organizing Committee met in San Francisco in June, 1964. (1965 Report, page 37, et seq.)

As the membership dwindled, it soon became evident that the militant young people throughout the country were being attracted more to the dynamic action organizations, such as Students for a Democratic Society, and also to some of the organizations that followed the Chinese Communist line, than to the DuBois Clubs that were suffocated with minor internal splits, supervision from older and more experienced Communists, and the bureaucracy that is always present in any Communist organization.

Consequently, the membership of the DuBois Clubs steadily dwindled until it became a matter of liquidating them altogether and sending Communist youth into the other organizations, or to replace the DuBois Clubs with a new Communist youth division.

Accordingly, a meeting was held in Sherman House, Chicago, February 7–9, 1970. Gus Hall spoke to the meeting of 395, of whom about 275 were official delegates. The main address, however, was delivered by Jarvis Tyner, member of the National Committee of the CPUSA and National Chairman of the DuBois Clubs of America.

Some idea of the Party's difficulty in recruiting youth is revealed in the statement of Albert J. Lima, Chairman of the Northern District of the California CP (*Party Affairs,* March 6, 1969, page 24) and the other articles and reports in Party publications. As attempts to organize and recruit fell far short of expectations, the columns of *Insurgent,* official DuBois Clubs publication, carried reports of factionalism, disorganization and disappointment. It was not difficult to discern the causes for this decline—it was primarily due to competition from Students for a Democratic Society, Progressive Labor Party, Young Socialist Alliance, and similar groups whose members were outside throwing rocks while

the DuBois members were inside splitting ideological hairs and arguing with their Communist elders. The resentment of young people against adult discipline, whether at a University, at home, or in the Communist Party, led many of the DuBois Club members to express their impatience with the restraints that were placed upon them by older and more patient members of the adult party. There was a marked dichotomy between the Party leaders who urged a patient program of infiltration and domination of other youth organizations, and the DuBois Club members who preferred to take to the streets and man the barricades.

From California those who were proposed for places on the new governing body of the Young Workers Liberation League, were James Bond and Mike Lima (son of Albert J. Lima), from Northern California, and Kendra Alexander and Roberta Woods from the Southern California District. Temporary officers were Jarvis Tyner, Chairman; Carolyn Black, Black Liberation Secretary; Mike Zagerell, Educational Secretary; Barry Cohen, Organizational Secretary; Judith Edelman, Trade Union Secretary, and Roque Restorucci, Publications Secretary. (*Combat,* March 1, 1970.)

It is yet too early to predict the direction to be taken by the Young Workers Liberation League, and undoubtedly it will concentrate its attention during the next few months on increasing the population of the organization which is based on the remnants of the DuBois Clubs membership and aggregates approximately 800 to 1000 members.

It has already followed the CPUSA lead in declaring support for the Black Panthers, and since Gus Hall, Daniel Rubin, CPUSA, Organizational Secretary, Mike Zagerell, National CP committee member, and Jarvis Tyner all combined to launch and monitor this new youth organization, it will scrupulously conform to and propagate the Communist Party line.

Communist Party of California

There are, of course, many characteristics of the adult Communist Party organization that are also found in the Youth Division. Before proceeding with the details of the Communist organization in California, it will be helpful

to consider the testimony of a man served for several years as an undercover informant for the Federal Bureau of Investigation, the accuracy of whose testimony has never been controverted. Howard Philbrick testified before the Senate Internal Security Subcommittee in April, 1953. (See *Senate Internal Security Subcommittee Report,* Page 739, et seq.) In view of the important disclosures made by Mr. Philbrick, we quote from his testimony at some length:

"Well, there are a great many layers and degrees of Communist Party membership, Senator. Of course, in their propaganda, the Communist Party talks about a classless society, society without classes. Actually inside the Communist Party I discovered perhaps the most complicated class degree of classes that I had ever experienced. First of all, of course, there are, in broad general terms, two classifications: The above-ground Communist Party membership, the Communist Party functionaries, the known Communists who actually are the fall guys for the Communist Party. Those are the people who are known publicly as Communists and whose names appear in the newspapers with the Communist label attached.

Then the second section of the Communist Party is the underground section of the Party. Now, in the underground I discovered that there were three additional classifications. First of all, there was the active Communist Party member, and perhaps later on after we come to my later experiences, we can describe precisely how these members function. First of all, the active underground Party member attended several meetings. He was assigned to a cell and attended meetings with other Communists knowing them as Communists, cells numbering from five to ten or even twelve members prior to 1948. Then in the underground section of the Party, there is a second classification known in Communist terminology as a floater. A floater, I was told, was a Party member who did not belong and was not assigned to a specific cell. In fact, he would avoid attending a cell meeting in order that he would not be picked up and not be discovered by government or by counter-espionage agents. A floater would remain active, carrying

on Communist Party instructions. He worked under Communist Party discipline. He would receive his instructions by courier, usually one or two people, and he would make his reports through these same individuals.

Then a third type of underground Communist Party member is a sleeper. A sleeper, I was told, is a comrade who is put on ice completely. He is salted away. He is in contact with nobody with the Communist Party. He remains completely separated from all Party contacts until such time at some date when the Communist Party has some special action, some very special task, which it may need to have done with the greatest security, and that is when they will call upon the sleeper to carry on a particular task. By that time, of course, they hope that the government has no knowledge nor new information indicating that this individual is in fact a hardened, disciplined Communist Party member.

All through the years, way back, starting with the youth activities, we were constantly instructed by Communist Party bosses to work upon the church groups, church and youth activities, church-youth organizations, and upon both minister and laymen in the church field. . . ."

* * * * * * *

". . . no teacher or professor, a member of the Communist Party, can in any way pursue the normal, what we know to be the intellectual freedom or freedom of speech . . . because these people are completely under Communist Party discipline. They are not free as Communist Party members, to take individual free action outside the discipline of the Communist Party. They cannot do it and remain members of the Communist Party. It is impossible for them to do it and remain members of the Communist Party.

Well, now, in 1944 Fanny Hartman repeated the same instructions to me when I received my Communist Party card, and said: 'If you are questioned or if you are charged to be a member of the Communist Party, you will swear on a stack of Bibles

that high (indicating) that you are not and never have been a member of this organization.' "

Another undercover FBI informant testified at a later period, in 1962, that he was imbued with the same Communist doctrine concerning disclosure of membership, and he testified as follows:

"Mr. Scherer: Can you tell the committee just how the arrangements were made for Frank Wilkinson to take over the Executive Secretaryship of the Citizens Committee to Preserve American Freedoms?

Mr. Ronstadt: I don't know all the details, but the only thing that I can relate is that in an association, you might say, with any of these groups, there has to be a central organizing figure that will take, you know, charge of the thing and do a good job. Of course, he was not known, you see, as a Communist, and he had refused, of course, to testify before the California Senate Committee, but this, *per se,* as you probably know, does not make a person a Communist. I have heard this though, in later years, that he has denied that he was a member of the Communist Party. For instance, people that have circulated petitions in relation to him. I have spoken to people that have heard him speak when he has stated that he has not been a member of the Communist Party or never has been.

Mr. Travenner: Which you know is untrue?

Mr. Ronstadt: Which I know definitely to be untrue.

Mr. Johansen: But those denials were not made at any time under oath, the denials of membership that you refer to?

Mr. Ronstadt: As far as I know, they were not made under oath. This was at places where he has spoken to various groups and things like this, where the question has been asked. Yet, I can truthfully say, I was present with him at these various Party meetings. Not only that, but I delivered instructions to him on—during the latter part—well, part of 1952 and through 1953, and I was at that time receiving my own instructions from a fellow by the name of

Dave Elbers." (Ronstadt testimony, October 10, 1962, HUAC Report, op. cit., page 1492.)

The covert and overt system of membership still continues. Prior to 1957, when the Northern and Southern Districts of California were formed, the Party almost, but not quite, followed the orders issued from National Headquarters. It was this spirit of independence that has characterized California Communists from the very beginning of their existence.

After the Chicago convention of 1919, where the most radical elements of the Socialist Party broke away to form the Communist Party, the radical California Socialists met in Oakland. This October meeting actually launched the Party in this state, and a month later the organization was well underway.

There had been a background of Socialist radicalism for several years, split and weakened by World War I, but regaining vigor by the end of 1919. On November 9 of that year, delegates assembled at Loring Hall, Oakland, from San Francisco, Oakland, Dimond, Richmond, San Jose, Santa Cruz, Fresno, and Lodi. (See: *Formation of the California Communist Labor Party,* by Ralph E. Shaffer, Associate Professor of History, California State Polytechnic College, Pomona, in *Pacific Historical Review,* February, 1967, page 59, et seq.) This convention founded the Communist Labor Party of California. For several years after 1919 no Comintern representatives came West to issue orders to the California Communists, and visits from national officers were exceedingly rare. New York and Chicago were in those days the focal points for the new movement and California was virtually ignored until the early 30's.

With the depression, the unemployed and farm workers received great attention in this state, and the ranks of the Party rapidly grew. Furthermore, there was the great influence and prestige of Max Bedacht, the barber from California. He had attended the founding convention in October, 1919; he was elected a member of the National Committee; and through loyalty to Stalin succeeded Ben Gitlow as General Secretary of the CPUSA —the post now held by Gus Hall. (*Native Daughter, the Story of Anita Whitney,* by Al Richmond. Anita Whitney's 75th Anniversary Committee, 170 Golden Gate

Avenue, San Francisco, 1942; *I Confess,* by Ben Gitlow. E. P. Dutton & Co., Inc., 1940, pages 326 and 327.)

Bedacht made several trips to Moscow, participated in some important comintern sessions, became friendly with Solomon Losovsky, head of the Red Trade Union International, and was eventually made head of its American section, the International Workers Order. (Gitlow, op. cit., page 456.) He eventually became involved in savage factional warfare, lost his power, and quietly dropped out of all Party activities. It was Max Bedacht, however, the obscure San Francisco barber, whose influence and power in international and domestic party circles focused attention on the California organization, and it was Bedacht who was responsible for its added importance commencing in 1935 when William Schneiderman became the district organizer.

The era of provincialism had passed, and as California grew in population and in strategic significance, the Communist organization here assumed enormous importance. As Berkeley has become a symbol for student rebellion, so has the California Party become a symbol for Communist revolution.

The two most important figures in the California Communist Party have been Dorothy Healey and Albert J. Lima. Mrs. Healey was, until recently, chairman of the Southern District; Mr. Lima is chairman in the North. They have been mentioned frequently in the press and have appeared on California campuses as speakers.

Dorothy Healey was born in Denver, Colorado. She joined the Young Communist League in the 30's and when we first questioned her as a witness in December 1941, she was employed by the state as a Deputy Labor Commissioner. Most of her early activities were in the agricultural areas, notably in Imperial Valley. She has been the wife of Louis Schneiderman, Donald Healey, and Phillip Connelly, each having been identified as a Communist functionary.

Mrs. Healey is a good speaker. In her several appearances before us, she has refrained from the vituperative antics that are exhibited by witnesses with less control. She has steadfastly refused to discuss other Party members, but has usually testified freely about her own activities, and about the Communist movement generally.

Unlike many highly-placed officers in the Party, Mrs. Healey is very well informed concerning Marxian ideology, and seldom declines an invitation to make public appearances on the speakers platform or over TV and radio facilities. Now 55, she has spent more than 40 years in the Communist movement, advancing from agitprop work in the fields to membership on the National Committee and then to the top office in southern California.

Albert J. Lima has a background of agitprop work in the field of industrial organization. His wife, Helen Corbin Lima, has been active in the same general area, having been employed at Herrick Hospital in Berkeley, and active in union matters. She has also participated in the usual succession of Communist front activities, fund-raising drives for the *Peoples World,* and keeping house for her husband and three children at 6115 Dover Street, Oakland, where the Limas have resided for the past several years. Previously they had lived at Eureka, Richmond, San Francisco and Berkeley. Many prominent Communist officers have visited the home on Dover Street, and Bettina Aptheker lived there for awhile, as the Limas have occasionally extended the use of their premises to boarding guests.

The San Joaquin Valley

The San Joaquin Valley, although part of the Northern District, is not only important because of the role it has played in Communist history, but because it has been very much neglected by both Communist and non-Communist writers. This richly productive region was the scene of labor violence, riots and murders in connection with the cotton strike of 1933 when it was a "Grapes of Wrath" locale; since Cesar Chavez opened his headquarters at Delano, the cycle of labor unrest in the San Joaquin Valley has commenced anew.

In the 30's and early 40's James McGowan was the Communist official who operated the Party organizations in Tulare and Kings Counties. His headquarters was at 329 North L Street in the City of Tulare. He appeared before our committee on several occasions, and concentrated his work in conformity with the existing social conditions and problems of the time, on the recruiting of

migratory farm workers and the unemployed, at which he was extremely proficient.

Lima spent relatively little time in the central California area, most of his attention being concentrated in San Francisco, Oakland, Berkeley, Marin and Contra Costa counties, and thence north to Sacramento. South of the Bay, he frequently visited San Jose and other cities in that vicinity. Northern California, being more sparsely populated, included many counties where a survey of annual fund drives for Party publications, front group activities, and registration in the Independent Progressive Party and the Peace and Freedom Party discloses a very thin Communist population.

Mr. and Mrs. Howard Thompson served as undercover Communists, the husband for 14 years and his wife for 12 years, attending meetings, working their way up into positions of official importance, and regularly reporting to the FBI. As is often the case, Howard Thompson was first an active worker for the Independent Progressive Party, and through this Communist-operated organization, he came immediately into contact with many Party members and sympathizers. He was eventually invited to discussion meetings in members' homes, and was questioned closely about his political beliefs. After an appropriate period of probation and investigation, he was invited to become a Communist Party member, and assigned to the San Joaquin County Club. Its members, averaging about a dozen, met in private homes and observed strict security precautions guarding against infiltration by government agents.

Thompson proved an eager member, and was soon made chairman and secretary of his club, then a delegate to both district and state conventions. After the Thompsons became members of the executive committee of the San Joaquin Valley Section, and because of their contacts at conventions, their area of acquaintance and knowledge were greatly expanded. Indeed, the valley section meetings were held in the Thompson home, and he served as a section delegate to district meetings in San Francisco.

From the reports the Thompsons faithfully made to the FBI from their testimony before the Subversive Activities Control Board and their statements to the House Committee, as well as from documentary sources, it was

learned that the sections in the Northern District were as follows: San Francisco County area; East Bay area; San Mateo, Santa Cruz, and Santa Clara Counties; Sonoma County; Marin County; Humboldt County, and the San Joaquin Valley. In addition there were the usual commissions that varied as exigencies demanded, but which basically were about the same as those in the Southern District under Dorothy Healey: trade unions, agriculture, youth, Negro, legislative, peace and sometimes security. More often, however, security matters were handled as special assignments given to members experienced in this field. The disciplinary or "control" commissions were once a permanent fixture in all Party organizations, but in recent years control commission members have also been specially selected when the occasion arose.

Agricultural Organization

Howard Thompson stated that in 1960 a report was made by the Agricultural Commission, San Joaquin Valley Section, to the Northern District of the Communist Party in California. It contained a proposal directed to the United States Department of Labor, to the effect that open hearings should be held with union participation for the purpose of fixing wages and working conditions for Mexican farm workers. "We wanted a statement," said Mr. Thompson, "from the Communist Party of Mexico, that they did not want the braceros to come to this country. They were against the braceros being shipped into this country. The Communist Party of this country came out with the policy, stating that they should be organized, not necessarily in the Communist Party, but in labor organizations to give them protection of labor organizations. So at the time this was written we asked Al Richmond to contact, if he could, the leadership of the Communist Party in Mexico to get a final statement from them as to what they believed on this bracero program, because we found the Communist Party in the United States was directly in reverse with the Communist Party in Mexico." (Testimony to House Committee, July 12, 1964, April 27 and 28, 1966, page 47.)

This of course was not only a forerunner of the United Farm Workers Organizing Committee in the agricultural valley, headed by Cesar Chavez, but it also illus-

trates the international contacts between the Communist Parties in the United States and Mexico. We shall deal with the Communist manipulations of racial minority groups later in this report in the sections dealing with the Mexican and Negro minorities in particular, but it is useful to understand that since the 30's in California, the Communist Party has persistently been striving to organize the unemployed, alienate the racial minority groups from the rest of the country, foment as much trouble as possible, and then to step back and manipulate the resulting disturbances from positions of remote control.

It will be remembered, we hope, that our 1967 report contained 60 pages concerning the Delano grape strike and the origin and nature of the United Farm Workers Organizing Committee. We are also aware of the fact that certain Communist front organizations managed to secure advance copies of our report even before it was released to the press, and concluded that it was sufficiently innocuous so far as the Cesar Chavez operation was concerned, that they refrained from organizing their usual attack against us, the report, and the continuation of the subcommittee. Some of our information came from members of the Chavez staff working in the Delano office; other information came from official documents of the organization, reports from law-enforcement agencies, and from an analysis of the wide-spread support that came from a wide variety of organizations. Our investigation convinced us that the movement was not dominated by Communists, but we did find that they had, characteristically, infiltrated the organization and exercised considerable influence over its activities. This is the classic pattern of Communist activity, but it does not mean that every organization they infiltrate is under Party domination, any more than all campus demonstrations are the direct results of Communist plots. In case the concerned front organizations manage to get a preview of the present report, we anticipate that their attack against it and against us will be much less gentle, as we have undertaken to cover a far wider range of activities on a statewide basis, and to bring the subversive situation in our state up to date.

In previous reports, we have discussed professional sections or clubs of the Communist Party. They are, as the name implies, composed of doctors, lawyers, university and college professors, and other professional people whose membership in the Party is preserved in the most rigid secrecy. This has always been true of Communist Party organizations throughout the country, and now it is especially true in California and New York. These are the people whose proficiency in Marxian dialectics and their positions of prestige and influence render them indispensable aids when the Party needs expert advice and leadership. In the present era of security anxiety that amounts to almost paranoia in the Party, the security restrictions and precautions have reached an all-time high. As we have pointed out, there have been no written membership cards or other written records of memberships since December, 1947; no membership records or records of dues are kept at Party headquarters or even in the homes of the chairmen of the Northern and Southern districts. On the contrary, they are scattered widely among a few trusted members, such as Mrs. Thompson, the FBI undercover informant, who was charged with keeping the membership records for the San Joaquin Valley section of the Northern District of the Communist Party of California, and therefore was very conversant with the membership. Her husband testified that: ". . . this area of operation in the Communist Party is very secret, even to the leadership of the Party, in that I consider myself, as a district committee member, among the leadership and we were not given this knowledge. It is kept very secret, and you just know that there are such people and that they turn to them for advice and knowledge when they need it, but they are people who are so advanced in Party policy and principles of Marxism-Leninism that they do not need direction from people of the club and district level." (HUAC report, op. cit., page 66.)

Mrs. Lulu Thompson concluded her testimony by stating:

"Many times I would attend meetings in San Francisco, which would last all day and every speaker at these meetings would try to outdo the next speaker in tearing our country down and ripping the Government into

shreds. They accused our leaders of every heinous crime imaginable, including germ warfare in Korea and North Vietnam. They would deny God. They ridiculed churches and religions. I felt unclean both mentally and spiritually. It seemed when I got out in the brisk air of San Francisco, I wanted to clear my lungs and breathe deeply of the San Francisco air. I would raise my head for a breath of air and I would see our Flag fluttering atop one of the buildings, and this would reassure me, and I knew this Government would overcome the people that were trying to tear it apart." (HUAC rep., op. cit., page 115.)

It is extremely unfortunate that a consistent and vicious flow of subversive propaganda has cast these extremely patriotic and courageous individuals who at great personal loss to themselves, both emotionally and financially, agree to penetrate the very heart of subversive organizations in this country for the purpose of protecting it, and reporting to those official agencies that are striving to protect us, in the role of the villains instead of the heroes.

The same propaganda, of course, is calculated to undermine public confidence in covert informants for the various official agencies, and to cast the agencies themselves in the role of red-baiters, witch-hunters, and to hold them up as objects of ridicule and derision. We have recently noted that the same technique is being employed now against our courts of justice throughout the land, the brazen defiance and arrogance having risen to a new degree of boldness, and the way having been paved by torrents of propaganda that pour into the United States from abroad in an endeavor to subvert a Government that so far has taken no steps to stem the flood.

Factionalism in the California Party

It is inevitable, when foreign Communist parties are compelled to support the policies of the USSR, that they at times appear both inconsistent and inexplicable. When the world Communist movement condemned fascism as evil to be shunned by all faithful Party members the world over, and a pact was later made pledging nonaggression with Hitler, in August 1939, it stunned American Party members and their comrades everywhere. But

they steadfastly rallied to support the party line. When during World War II American Communists were instructed to keep our country out of the conflict and preach peace at any price, they obeyed as usual. That was because the war in its early stages was an evil imperialist war, according to the Communist definition. Then because the Soviet Union was, as we have said, invaded on June 22 1941, the war became a peoples war and American Communists were ordered to support it, which they did by simply reversing their position overnight. Then came the jolt when Stalin, whom they had literally worshipped for almost thirty years as the infallible leader of the world movement, was exposed by his successor as a monster who had betrayed the Communist cause. Then came the armed invasions of Poland and Hungary by Soviet troops in 1956, and the crushing of Communist regimes in those countries simply because they wished to pursue their own paths towards the Communist utopia. Many Party members became disillusioned when Stalin was revealed in all his brutality as the sort of man the capitalists had been describing. For almost thirty years the Party faithful had been taught to disbelieve the capitalist press and to rely only on publications that printed the truth: The Party press. Now this was all shattered. The effects were deep and powerful, and many Communists resigned openly, criticizing the Party as they did so. Most of them, however, quietly dropped out of Party activities and tried to forget the bitter mistake they had made. There was much criticism of the hierarchy in the United States, that self-perpetuating clique that remains at the head of the Party nationally through thick and thin: members of the National Committee and trusted party-liners like Gus Hall, Herbert Aptheker, Jack Stachel, Philip Foner, Louis Diskin, and their obedient supporters in California, such as Irving Sarnoff, Rose Chernin, Al Richmond, William Taylor, Roscoe Proctor, Ben Dobbs, Nemmy Sparks, Emil Freed, Lou Goldblatt, Rude Lambert, Elsie Monjar, Delfino Varella, Archie Brown and a host of others too numerous to include here. We have mentioned those whose names will be familiar to readers of previous reports. We should, of course, include Albert J. Lima, but we omitted the name of Dorothy Healey, because she has been a center of Party

dissension that has spread throughout the entire movement in California, and which is exerting such a profound and important effect on the membership that it must be treated here at considerable length.

Many of the California Communists, Mrs. Healey prominent among them, have not hesitated since 1956 to criticize the actions of the Soviet Union in invading Poland and Hungary. When Russian troops and military hardware invaded Czechoslovakia on August 20 1968, it was the last blow to many Communists, both in this country and abroad. In examining the liberal and democratic regime that was being created within the framework of the Czech Communist government, the Kremlin considered it was departing from the path of Soviet rectitude, and the Soviet armed forces crushed not only the last resistance of the Czech people, but at the same time crushed the loyalty of many thoughtful Party leaders, to say nothing of many more rank and file members.

As we have stated, democratic centralism is a high-sounding theory, but one that exists only as a theory in the Communist Party. Actually, as all Communists know very well, the decisions are made at the top of the organizational pyramid and thence transmitted down to the broad-base membership. Those decisions and directives must be carried out without question, or charges of factionalism and deviation are levelled, a trial committee picked, and discipline handed out in an exceedingly undemocratic manner. Many of the more courageous Party officials resented being told to follow the Communist line, no matter how outrageous it was, and many said so to their comrades. The blind obedience to the world party line as promulgated in Moscow and handed down on high to the American membership, was being questioned.

Militant North—Critical South

The two major propaganda outlets that supply Communist literature to the Pacific coast are the International Bookstore in San Francisco and the Progressive Bookstore in Los Angeles. The former is at 1408 Market street, the latter at 1506 West Seventh street. It is essential to an understanding of the relatively dogmatic and militant adherence to the party line by Mr. Lima's

northern district of the Party, and Mrs. Healey's more moderate district, if we examine the tenor of the propaganda disseminated from these sources.

We have conducted such examinations from time to time, and what we wrote in our 1959 report about them is even more applicable today. Our surveys were made in 1957, one year after the Soviet invasions of Poland and Hungary, and the California party was still suffering from the shock. In the Healey district there was much criticism of the USSR; in the Lima district there was an effort to justify the invasions and a perceptible stiffening of the militant line. These attitudes were reflected in the nature of the propaganda being handled by the two propaganda outlets.

In our 1959 report, pages 146–147, we said:

> "The person who is usually in charge of the Progressive Book Store in Los Angeles is Frank Spector, a Russian Communist who has been defying efforts to deport him for a good many years, and who has appeared before this committee as a witness. Until the 'secret' Khrushchev speech in February 1956, the contents of this bookstore were uniformly and militantly Communist. Thereafter a few books began to appear on the shelves that in the old days would have been considered completely heretical. For example, before the publication of *Dr. Zhivago* by Boris Pasternak, there was a book called *Not By Bread Alone*. Dudintsev, the author, held a prominent place in the literary fraternity of the Soviet Union. During the Stalin regime and until the Khrushchev speech heretofore mentioned, the clamps of rigid censorship had been tightened, to such an extent that no Soviet writer dared to produce anything that was not in strict conformity with the Communist line, and certainly he would never dare publish a single word that was even inferentially critical. But in the Khrushchev speech there was a promise that these old rules should be relaxed, that criticism should be invited, that Bolshevik self-criticism was an excellent thing, and that writers should be free to publish their true feelings. This book *Not By Bread Alone*, was certainly critical of the Soviet regime and it rocked the intellectual foun-

dations of the country. Yet it was being sold in the Progressive Book Store in Los Angeles by Frank Spector. In addition, even after he had been imprisoned in Yugoslavia for such rash heresy, Milovan Djilas' book, *The New Class,* was also sold in the Progressive Book Store, as were copies of the Pasternak book, *Dr. Zhivago.* No such attitude was taken in the San Francisco outlet, the books in the International Book Store clinging steadfastly to the Communist cause, and carrying no item that was critical of the Soviet regime or the Party line. We almost neglected to say that in addition to the three books already mentioned that were sold in Los Angeles, there was another, even more indicative, called *The Naked God,* by Howard Fast. This book, which is a garbled but nevertheless angry and vehement criticism of the Communist Party of the United States published shortly after Fast left the organization, was roundly lambasted in *Political Affairs* by a reviewer under the title 'The Nakedness of Howard Fast.' Yet this book was sold with the three companion volumes heretofore mentioned under the direction of Frank Spector in the Progressive Book Store in Los Angeles.

Why this sudden deviation from the old and rigid Party line? Obviously, the cause is attributable to the fact that the Progressive Book Store wants to divert suspicion from itself or because it has made a sincere and pronounced deviation from the path of Communist rectitude. We believe it has done the latter, that it has received great criticism because of this deviation, and we will set forth our reasons in detail in that section of the report, which is entitled, 'Current Communist Techniques.' "

On pages 181–182 of our 1959 report, we wrote as follows:

"Participating in strikes, lending her considerable organizational talents to the creation and operation of front organizations, directing the preparation and distribution of propaganda, Dorothy Healey rapidly rose in the ranks of the Communist Party until finally she emerged as a member of its National Committee and head of the organization for all of

Southern California. But Dorothy Healey was also caught up in the developments of 1956. We should say at this juncture that many of the Party members who either defected in 1956 or shortly thereafter, or who veered sharply to the Right and attacked their superiors who still clung to the old dogmatic Communist ideas, had gradually been going through a process of disillusionment for a great many years. In many cases this occurred unconsciously, but people with any semblance of judgment can hardly justify a long period of complete contradictions in the Communist Party line, and find their ideals and beliefs blasted overnight without realizing that no one single thing has actually caused them to leave the movement. So when the events of 1956 occurred, for many individuals it was simply the final nudge necessary to complete disillusionment and a break with the Party. Some individuals, of course, left the movement completely. Some remained true to Marxism, but left the Party organization for one reason or the other. Others remained in the Party and fought to put over their own relatively conservative ideas against the stubborn Party leadership represented by William Z. Foster. (Foster preceded Gus Hall as General Secretary of the CPUSA.) Dorothy Healey belonged to the latter group. Her battle with Foster was vicious and heated. It boiled over into the pages of *Political Affairs* and threw the Southern California Party organization into a turmoil. This is the reason for the presence of the anti-Communist books in the Progressive Book Store on West Seventh Street, and it also underscores the contrast between this propaganda outlet and the store in San Francisco where no such literature is to be found. In both stores, Communist books and other materials are on sale, but in Los Angeles, the Party member can buy literature on both sides of the question. At 1408 Market Street, San Francisco, no such choice is available.

We have it on very good authority, which we are unable to disclose for public scrutiny, that Dorothy Healey is in very bad graces with the Communist

high command, and that she will either be brought back into the path of strict obedience and rectitude or be compelled to leave the Party. In the meantime, efforts have been made to restore discipline among the rank and file membership in Los Angeles, and this effort has met with considerable success."

The invasion of Czechoslovakia by Soviet armed forces occurred on August 20, 1968. Three months earlier Dorothy Healey, having recently returned from that country, made some extremely important statements in an official Communist document known as the *Discussion Bulletin,* Communist Party, Southern District of California, No. 1, May, 1968, which were sufficiently provocative to raise great interest not only among the Communist membership in California, but also throughout the country.

Mrs. Healey had, as we have seen, been critical of the autocratic rule of the Communist hierarchy for a number of years, and subsequent events exerted such a reaction in the Communist structure of California, that we quote at length from her remarks in May 1958.

". . . generally we are correct," said Mrs. Healey, "when we point to the enormous problems in the building of a new society—but all too often the answer is given whenever one discusses any weaknesses in the socialist world, 'Oh well, but look at the greater evil of capitalism'. Of course that's absolutely *true,* and we wouldn't be Communists if we didn't believe it was true, but the fact is that the evils of capitalism cannot in my opinion be used to justify the defects of socialism. If they are, then what are we fighting for? If all we are going to have is the continuation of the evils reproduced in a different way, with a different method of ownership, then there's not the qualitative transformation that we insist must take place." (In Communist discussions, the words "Socialism" and "Communism" are used interchangeably.)

In discussing her impressions during her visit to Czechoslovakia, Mrs. Healey said:

"I was particularly interested in the events in Czechoslovakia because while I was there, by a set of very fortunate and unusual circumstances, I was able to spend almost all of my time with the men and women

who are in a great sense responsible for the fact that the Communist Party is itself giving the leadership today in making an enormous stride forward around the questions of socialist democracy and what socialist democracy should mean. I met with an organized group set up in the Academy of Scientists of the Czechoslovakian Party, of historians, economists, sociologists, philosophers, constitutional lawyers and others meeting as an interdisciplinary team of all the academic disciplines to debate one question: Power in a socialist country. What do you do about it? How do you guarantee that there are any methods of checks and balances? How do you provide (and I am really quoting what they said, none of this is my own language), when you have a one-party state, that the trends within the party are legal? Because obviously there is never a time when all people are going to think alike in a Communist Party. How do you provide the different opinions are legalized and allowed to challenge one another, to debate and confront each other? And this is a very serious question, because anyone who has travelled in the socialist world knows that this is a problem that confronts *every socialist country without exception.*

They asked: How do you guarantee that the politburo of a party is *not* the sole, main, almost exclusive repository of all decisions? How do you guarantee that there is a flow back and forth of decision-making power? Who makes decisions and where are the decisions made? The questions they ask and what they were debating are precisely the questions that came to the fore in the last few weeks in Czechoslovakia, and as contrasted, I believe, with Poland and the Soviet Union, in Czechoslovakia the party leadership is giving the most important direction in guaranteeing that these kinds of questions be answered in a different way than ever before.

Part of the problem, the rationale, the justification of the actions that have taken place in the socialist world were able to happen, is that part of it that stems, in my opinion, from the fact that a certain mystification and institutionalizing of Marxism has taken place. First there developed a theory that there was

only one scientific truth and since theory and practice must be in unity, there can therefore be only one scientifically correct policy. And the authority for establishing this one correct truth is the central committee, or to be more accurate, the politburo. Therefore the policy of the politburo at every stage is the scientifically correct application of scientific socialism.

Everybody knows that's what happens all over the world, including in our own party, but it seems to me that this is a doctrine like Papal Infallibility, transplanted to a Marxist framework with science in the role of god. I think we have to fight for a return to what I think is proper Marxism, which is the recognition of the relativity of truth, that always it's an approximation, that no truth in (sic) complete and final, that the process of unveiling truth is dynamic and not static and that therefore there will be disagreements. And disagreements do not mean heresy, necessarily, but disagreements become a way of unfolding truth."

Mrs. Healey then proceeded to discuss the unyielding dogmatism of Communist ideology, and cited as her example the attitude of the small group of Communist leaders in the Soviet Union who exercise absolute power, and who, although not trained in biology, nevertheless made a decree that one of their prominent scientists Trofim Denisovich Lysenko, favorite of Stalin, member of the Supreme Soviet, and showered with honors, rejected theories of heredity accepted by most geneticists, but being in line with Marxian ideology, won the support of the Party. The teaching of biology in Russia was therefore adjusted to his theories and since Stalin gave his personal support to Lysenko, any scientist who opposed his doctrine became subject to reprisals. (*Encyclopedia of Russia and the Soviet Union,* Michael T. Florinsky, Ed. McGraw-Hill Book Co., Inc., 1961, page 326.)

Dorothy Healey's comment on this subject in the *Discussion Bulletin* was as follows:

"Secondly, in regard to the institutionalizing of Marxism, we have the idea that the Communist Party at any one stage can be the final word on all aspects of human life—the economic, the political, the philo-

sophical, the esthetic, no matter what it is—that the Communist Party is and must be the determining judge of all these questions. I don't think anybody has ever really reckoned with, for instance, what the tragedy Lysenko represented to the Soviet Union in terms of its development scientifically. Here was the well-known example, and there are others that are not as well known, of where the Communist Party's leadership decided *this* was the correct approach towards biology, and *only* this was the correct approach towards biology—and everything else in the biological schools of the Soviet Union had to be dismissed, rejected or subordinated almost totally to Lysenko's theory. At the minimum, they estimate and print in their own estimates now, almost 20 years of scientific advance was lost in the field of biology in the Soviet Union because of this."

Mrs. Healey said a great deal more, indeed five legal size pages more, but we have given enough of her critical remarks to lay the foundation for what was to come later. The *Discussion Bulletin* also contains comment from nine other prominent members of the Southern District of the Communist Party of California, and the document is a vital one because it served as a catalyst to bring to a crisis the long-smouldering elements of criticism and dissatisfaction with what the critics considered dogmatic and unyielding autocratic control by a handful of Party leaders in the United States, the "Papal Infallibility" of the world Communist movement, and, most important, the complete hypocrisy of the Soviet foreign policy in announcing, as Khrushchev did in 1956, that each Communist country should be permitted to pursue its own independent way toward the ultimate utopia, and then using armed force to invade any Communist country that failed to conform to the Kremlin's idea of what that path should be.

On Saturday, August 31, 1968, the leadership of the CPUSA called a special meeting at the Hotel Diplomat in New York City to strive and heal the deep rift that was splitting the membership more seriously than at any time since the Soviet troops invaded Poland and Hungary in 1956. A motion was made to authorize censorship of those members who deviated from the official line by con-

demning the thrust into Czechoslovakia, but votes for and against this move were almost equally divided, finally carrying by a scant majority. The decision having been made on September 2, the Party leaders from all parts of the nation remained divided. Mike Stein, Executive Secretary of the New York Party, termed the decision "vindictive," and declared that Gus Hall had refused to summon the National Committee to make the critical decision, pointing out that eleven days had elapsed since the invasion. Gilbert Green, veteran functionary from New York, criticized the armed interference with the internal affairs of the Czech Communist regime as a very serious blunder. These sentiments were echoed and re-echoed across the country—but, as has been the case in all of these critical situations, the CPUSA Politburo prevailed, and the condemnations of the "deviationists" were forthcoming. Dispatch from New York, *Los Angeles Times,* September 3, 1968.)

The influence and arguments of Dorothy Healey and her followers in California this time extended over a much wider area than the Southern District. Perhaps because this was the third such armed intrusion by Soviet forces across the borders of other Communist countries, and because of the assurances that Khrushchev had made that such acts would not occur, the dissent was more stubborn and involved more people.

The *Peoples World* in San Francisco carried a series of articles in complete defiance of the world party line, written by Al Richmond, from Prague. He described the unity of the Czech people despite the occupation of their country by Soviet troops, and declared with approval that the workers rallied to the support of liberal leader, Alexander Dubcek, first secretary of the Czech Communist Party—a position comparable to that held by Gus Hall in this country.

After returning to the United States, Richmond, long identified with the staff of the *Peoples World*, stated that on stone walls and buildings people had written their sentiments of resistance, and added that it would be more difficult to eradicate these sentences from the peoples hearts and minds than from the surfaces on which they had been written. He quoted one worker as telling him that "for six months we had more democracy than any

other country on earth." His observations on the spot, wrote Richmond, had convinced him that 98% of the people supported the Dubcek regime, and that the ranking leaders of the Party, Dubcek included, had actually been "abducted" by Soviets. (*Los Angeles Times*, October 14, 1968.)

Gus Hall Arrives in California

On April 5, 1969, Gus Hall spoke at the Southern District convention of the California Communist Party in Larchmont Hall, 118 North Larchmont Boulevard, Los Angeles. He announced that he had been studying some of the reports made by Dorothy Healey on the preceding day, as well as the discussion bulletins for the past several years, and said: "I would be less than honest if I did not say that I have had some difficulty in reacting to them."

Early in his speech, which ran for 14½ typed pages, Hall confirmed our 1959 report concerning the difference between the Northern and Southern Districts of the California Party. He said:

> ". . . when I was on the trip, the Secretariat met on the California elections, mainly, because there was a disagreement between the North and South, and what was the disagreement? The same as it has always been. The Northern District pressing for a more militant, Left policy, and the Southern District pressing for a more conservative Right policy."

Hall lashed out at Dorothy Healey repeatedly, sarcastically castigating her and her following. He charged that they alleged the World Communist movement and the CPUSA had never accomplished anything constructive, "right or relevant." He said their approach was always negative, never positive, and he urged the members of the Southern District to elect officers who would act to suppress the dissidents.

Political Liquidation of Dorothy Healey

Gus Hall returned to the United States from a meeting in Moscow, and shortly thereafter on October 18, 1969, the press quoted Mrs. Healey as stating that she had indeed lost her office as chairman of the Southern District,

because of her opposition to the Soviet occupation of Czechoslovakia. Then she went to the office of the State Department of Employment at Inglewood, and applied for unemployment compensation. She was awarded $35.00 a week for six months. She remains a member of the Party, and retains a nominal position on the District Committee. But she also steadfastly holds to her beliefs, that the invasions of Poland, Hungary and Czechoslovakia by the Soviet armed forces were grave mistakes, and that the Party should permit free discussion and disagreement by all Communists instead of blind obedience to directives issued by entrenched Party bureaucrats. We have not yet come across any resentment in the Party because Mrs. Healey's successor was imported from outside the State instead of being selected from the California membership.

Frank Spector, the Russian Communist deportee who ran the Progressive Bookstore on West Seventh Street in Los Angeles for so many years, and had held a variety of highly important positions in the movement, soon disappeared from his usual position at the store and soon thereafter resigned from the Party. There were, of course, others. But Dorothy Healey and Frank Spector were the most important Communists in California who suffered because of their disagreement with the official line.

At the time of her ouster, Mrs. Healey was making $65.00 a week from the Party for work as chairman of the Southern District that demanded virtually all of her time and energies. If the opponents of Communism would be willing to accept such small compensation and work as hard to preserve the country, as the Communists are to subvert it, most of the threat from internal subversion would rapidly decline.

Another well-known Communist figure was toppled from his position when the Communist Party of France removed Roger Garaudy from its Central Committee for "revisionism". Garaudy had long been respected among Communists throughout the world as one of their most noted theoreticians. Soon after the invasion he characterized it as "a crime against hope, a crime against socialism, a crime against the future." (Preface to *La Liberté en Sursis—Prague, 1908,* October, 1968, page 4;

The New Crises in European Communism, by Kevin Devlin, *Problems of Communism,* Nov.–Dec., 1968, page 57, n. l.)

Garaudy had been chosen as the most capable of all European Communists to lead the dialogue between Marxists and religious leaders in various non-Communist countries. He came out rather badly in exchanges with Jesuit theologians at St. Louis, but was hailed by the Party press almost until the time of his ouster. (*Communism and Christianity,* by Hyman Lumer, *Political Affairs,* Aug., 1968, page 16.) This famed spokesman for the Communist ideology had been the recipient of similar praises in other official Party publications in many countries. But at the 19th Congress of the French Communist Party, 960 delegates listened quietly when Garaudy addressed them and said "Our cause is just, our objectives will be achieved—all the more quickly when our methods have been profoundly changed." So, after 36 years in the Party, he left the rostrum, ousted from the Central Committee on which he had served for 24 years. He had described the invasion of Czechoslovakia by saying "Brezhnev surpassed Stalin." (*Time Magazine,* Feb. 23, 1970.)

We have devoted this extensive attention to upheavals resulting from the invasion of Czechoslovakia not only because of the profound upheaval produced throughout the Communist World, and the very pertinent effect it exercised on the Party in California, but more particularly because it once again demonstrates the toughness, the resilience, and the iron discipline of the entire World Communist movement. After each major crisis, the dissidents were demoted, ousted, isolated. Then the remaining loyal and subservient members regrouped and went on with their business of revolution. While attacking other countries for imperialist actions, these Communists will sanction the most flagrant imperialism on the part of the USSR, even to the armed invasion of other countries, without raising the slightest protest.

We can only hope that the true nature of the Communist apparatus will be better gauged by this example of the Parties throughout the world, notably in California, closing all possibility of criticism of the Soviet Union or of the Party line, and the swift, inexorable

purging of any members presumptuous enough to venture a view in opposition.

In these reports we have frequently described the background, the changes in the Party line, the techniques used successfully by the Party to accomplish its objectives, such as the "diamond pattern," which is used to enable a small group of Communists to dominate a large non-Communist organization and their amazingly successful use of the united and popular front techniques. While we realize these matters are neither sensational nor colorful, we also realize that the Communist Party in California today cannot possibly be understood unless one first understands the sort of background and techniques that are in use. It is, in short, impossible to understand where we now are and where we are heading, unless we also know where we have been.

Attack on Labor

At least three years ago, the phrase "monopoly capitalism" began appearing in the Party press, and ever since this propaganda phrase has been repeated over and over again to prepare the rank and file membership for a drive to infiltrate labor organizations. The reason for this is very understandable. What is puzzling is why the all-out drive was not made sooner. The essence of Marxism is the clash between those who produce and those who own the means of production, or as Communists say, the class struggle between the proletariat and the bourgeoisie. This exerts an immediate appeal to the have-nots, who look with envy on those who, for one reason or another, have achieved material success. The wide range of differences in natural capacities seems to play no part in this dichotomy.

The Russian Revolution arose from organizing the exploited workers—but in the so-called satellite countries, the class conflict was vastly subordinated to infiltration, propaganda, subversion on all fronts, and, most decisive of all, rude shoves instead of gentle nudges by Soviet military force. Economic strikes have been useful to Communists in all countries. When infiltration and control of strategically important labor organizations attains such proportions that it controls huge unions of teachers and professors, who condition students as revolutionaries;

unions dealing with the production and processing of foods, with communications, newspapers, radio, TV, transportation, and law enforcement agencies—then an entire nation can be paralyzed. This has been the classic technique of Communist infiltration, control and subversion of regimes the world over. Some observers believe that this new move to infiltrate American labor is doomed to failure almost before it gets launched, contending that there are no longer any large numbers of oppressed workers in the United States, but on the other hand the average trade union member is well protected, well organized, well paid, and well adjusted. Our responsibility is to present the facts, and it is a fact that a massive, determined drive to infiltrate our strategic labor unions is already underway.

It has happened before. The CPUSA *has* moved into control of such unions, and it *has* launched general strikes so savage and bloody that they paralyzed huge segments of our society. We are prone to forget that the State Relief Administration was honeycombed with Communists in the late 30's and early 40's; that the general counsel for the entire CIO organization in the United States was a Communist; that the national governing body of the CIO was dominated by Communists; that the CIO in California was run by Communists—among them Dorothy Healey Connelly's husband, Phillip; that the general strike in San Francisco in 1934 was started and run by Communists; that the United Mine, Mill and Smelter Workers, International Longshoremens' and Warehousemens' Union; United Electrical Workers, Marine Cooks and Stewards, American Communications Association, United Office and Professional Workers, United Federal Workers and other labor organizations mentioned in previous reports, were all under solid Communist control. During this same early drive, the Los Angeles Federation of Teachers was investigated by its parent organization and ousted from the AF of L because it was found to be under Communist domination.

All of this deep penetration was abetted by propaganda, not only from the Party press, but from covert Communists who had secured positions on large newspapers, placed there largely through the efforts of Phillip

M. Connelly, a proven member of the Communist faction of the American Newspaper Guild.

When the situation grew alarming, both the CIO and the AF of L undertook to rid their unions of subversive elements. In those cases where the task proved too formidable, the unions were expelled, but they are still growing in power and they are more firmly under Party control than ever. A study of this penetration of labor organizations in the 30's and 40's enables us to understand how, by the use of the so-called "diamond pattern" a handful of carefully trained and highly disciplined Communists, well versed in disruptive tactics and parliamentary procedure, can easily control a large, non-Communist organization. The tactics used in the earlier effort, tried and tested by practical application, are now being used again. It is too obvious to require extended comment that if a subversive force manages to secure control of large trade union organizations, it cannot only paralyze our society by a succession of strikes, but it can also affect our economy by constant demands for higher wages, thereby forcing up prices in a ceaseless ascent.

The preparations for this new attack on American labor organizations has been going on for several years. It has been an extraordinary campaign, so insistent in carrying such a theme of urgency that it was clearly intended to permeate the Party in great depth. As might be expected, the most authoritative announcements of the new program appeared in the most authoritative official publication of the Communist Party, *Party Affairs,* and was repeated in the *Daily Worker, Peoples World,* in pre-convention discussion papers, and in endless booklets and pamphlets distributed by Party bookstores and thence to the local clubs. (*Party Affairs,* Spring-Summer Quarter, 1967; May, 1968; October-November, 1968.)

The revised second draft of the new program, CPUSA, was issued in January, 1969, and stated:

> "The Centrality of the class struggle in present-day capitalist society remains unaltered by the growth of monopoly and state monopoly capitalism. To be sure, monopoly capital represses other classes and social strata, but the base of its profits, the most indispensable source of its wealth and power, is the

exploitation of the workers in the productive process. In this fundamental exploitative relationship lies the special position which the working class occupies in the anti-monopoly struggle.

It is the working class which offers the basic challenge to capitalist exploitation. It is therefore the cardinal force of social progress. But it is also inevitable that all the forces of social progress are increasingly compelled to question the right of the capitalists to exploit human energies and natural riches for private profit. And since the primary victim of this exploitation is the working class, all struggles, as they move closer to directly questioning the right of exploitation, tend to gravitate increasingly around the working class." (*New Program of the Communist Party, USA*; second draft, revised, January, 1969, III-6.)

This document also alluded to the skepticism on the part of many liberals and some Party members concerning the advisability of the new campaign, a matter to which we have already alluded. This attitude was handled as follows:

"What is surprising is that today professed radicals echo the line that in America the class struggle has either vanished or lost its relevance. Objectively such a line reinforces the position of the 'class partnership' advocates within the labor officialdom. For if there is no class struggle, there can only be 'class partnership' and 'class peace'.

We Communists emphatically reject this line and its logic of surrender. In a society governed by the exploitation and oppression imposed by monopoly capital, 'class partnership' can only mean the subordination of the workers' interests to those of monopoly. It places a premium on non-militancy and accommodation with the employers, or taking the path of least resistance. It seeks to turn workers into wooden soldiers, marching behind the battle banners of U.S. imperialism, even into such criminal ventures as the war in Vietnam." (*New Program,* op cit., III-16.)

Albert Lima contributed his support to the new undertaking in an article which appeared in *Political Affairs,* as follows:

> "The effort to involve the trade unions in issues which go beyond the narrow economic and political needs, is always a task the Communist Party must fulfill in all periods and under all conditions. That is the special role of the Communist Party . . . this is elementary for every Communist Party struggling to overthrow the capitalist system." (*Further on Labor Opportunism,* by Albert J. Lima. *Political Affairs,* May 1969, page 44 et seq.)
>
> The main direction must be against the monopolies and the state monopoly system in our country. Racism and an imperialist war economy are two of the main props of the monopolies. The main pressures must be directed against them.
>
> The struggle will also have to be directed against the top leaders of the organized labor movement, and to organize and to win the base which they have among sections of the working class. Otherwise a change in policy will be left to spontaneity."

Daniel Rubin, one of the leading national officers of the CPUSA, put the matter in its proper perspective after the 19th convention of 1969, when he stated in *Political Affairs:*

> "The convention that succeeded in restoring fully, in practice, the orientation of the entire Party toward the working class, black and white, and particularly toward its basic industrial core." (*The 19th Convention: a Turning Point* by Daniel Rubin. *Political Affairs,* July 1969, page 3, et seq.)
>
> "The main theme of the convention, Industrial Concentration, was reflected in a number of ways. On several occasions the convention was brought to its feet by speeches of delegates who are shop workers as they dealt with their experiences, with the meaning of the Party for them and with the industrial concentration policy." (*Political Affairs,* op. cit., page 5.)

The same issue of this monthly publication of the national committee of the Communist Party carried another article on the same subject by George Meyers, in which he described a meeting of the Alliance For Labor Action held in Washington, D.C. May 27–28, 1969, wrote Mr. Meyers:

> "It can mark the beginning of a rapid growth of the ranks of organized labor and a major shift in the role the trade union movement plays in the political life of the country.
>
> The ALA has come on the scene as the ruling class decided to mount a wave of repression against democratic organizations. The freedom movement is a special target with frame-ups, police brutality and murder. Peace activists and student demonstrators are on the receiving end of brutal treatment. Efforts to smash the hospital strike in Charleston are a sample of what can happen to the struggles of the workers in the mines, mills and factories if the monopolies have their way.
>
> The United Front of Labor—a Left-Center Coalition—is what is required. Reaction can be stopped in its tracks today as it was stopped in the 30's. The founders of the ALA are emerging as the center. A Left is needed to complete the united front. The rebuilding of this Left in the labor movement is the most urgent task facing Communists and other progressives. This means first of all, rebuilding the Communist Party. *Participation,* is the word—not *passivity.*" (*A Significant Labor Conference,* by George Meyers. *Political Affairs,* July 1969, pages 32, 33, 42.)

The exact methods employed to accomplish this massive infiltration project are not new. They brought success during an earlier era when the attempt was made, and we have no doubt that the Communists have profited by mistakes made then. It remains to be seen whether organized labor will also profit by the lessons of the past, and at least acquaint itself with the early signs—they are unmistakable—of penetration. The least that labor can do is become thoroughly familiar with the techniques by which these infiltrations are made possible; with the

changing nature of propaganda on the subject; with the identities of the leaders of the movement, and the effects upon the ranks of organized labor. In every instance that has come to our attention over the years, where a labor organization has kept abreast of these infiltration attempts, giving them widespread publicity, and taking adequate counter measures, the effort has been a complete failure.

Propaganda

The three main sources of Communist propaganda in California, in addition to the constant flood of materials from abroad and the publications of front organizations in this country, are the *Peoples World,* the International Bookstore in San Francisco, and the Progressive Bookstore in Los Angeles. The newspaper is almost entirely supported by fund drives and large individual contributions. Only recently a similar paper in New York, the *Daily Worker,* received a bequest of more than a million dollars from the estate of the late Herman Kaplan, the custodian for this sum being Herbert Aptheker, Lement Harris and Philip Foner. (*Chicago Tribune,* April 7, 1967.)

Lists of those who receive these publications as subscribers must be treated with extreme caution by amateur investigators, because some subscribers read and use them because of intellectual curiosity, as classroom documents, or for counter-subversive purposes. All subscribers are, of course, not Communists nor sympathizers any more than all members of Communist fronts are members of the Party.

We have mentioned *Political Affairs* as the one organ that declares the world and national Party lines each month. It is assuredly one of the dreariest of publications, and certainly one of the most important.

In addition to these two major publications, the *Peoples World* and *Political Affairs,* there are the booklets, programs and leaflets constantly being used by the CPUSA and its elaborate, interlocking network of front organizations.

Under the leaky provisions of the Foreign Agents Registration Act of 1938, millions of Communist propaganda items come flooding into the United States an-

nually from the USSR and other Communist countries. Needless to say, the U.S. publications permitted in Russia amount to a drop as compared to a torrent. Records of the U.S. Customs Service in San Francisco reveal that in 1959 more than ten million separate propaganda items entered the United States from Communist countries, a flood that is steadily increasing.

Irving Fishman, Deputy Collector of Customs in New York City, has repeatedly submitted reports to Congress on this subject. They reveal that there are three main check points in the United States at which foreign propaganda is monitored, New York, New Orleans and San Francisco. But because of gaping holes in the Federal law, attempts to stem the tide have been futile.

The San Francisco office has been paying particular attention to the quantity of propaganda coming to this state from China, North Korea and North Vietnam. Since the smoldering Sino-Soviet conflict escalated into a vicious and occasionally bloody confrontation, the theme has been to indoctrinate California young Americans of Chinese descent and persuade them to come to mainland China for study, or to work in this country as Maoist Communists. We shall deal later with the success this effort has achieved. Reproductions of some recent Red Chinese and Vietnamese propaganda, with some from other countries, are presented as exhibits at the conclusion of this section.

In addition to the domestic and foreign printed propaganda, there are speeches by Communists on the campuses of our state educational institutions, from high schools to universities. Quite manifestly they have nothing whatever to do with the standard curricula, and indeed are often so emotional and exhortive that they are followed by riots and destruction. There are the constant succession of meetings by front groups, accompanied by panel discussions, speeches, and instruction and classroom indoctrination in our schools that will be discussed more fully hereafter.

This relentless propaganda attack has been mounting in intensity for years. The measure of its success can be estimated by its increasing volume and its monumental cost. In recent years the Customs Service has reported that much of this material has been coming from Mexico

and other Latin-American countries. A subcommittee of the U.S. Senate Judiciary Committee, studying the techniques of Soviet propaganda, had this to say:

> "The use by the Communist propaganda apparatus of auxiliaries as diverse as they are inconspicuous emphasizes the importance of the ability to recognize them, despite their variety and concealment. Two distinct traits betray them. First, the auxiliary invariably and undeviatingly supports each position on international affairs, supported by the Soviets and faithfully follows Moscow in every reversal, twist and turn of policies; second, the auxiliary will systematically denigrate every aspect of western regimes, while attempting to whitewash the Communists with equal consistency.
>
> While the Party line may shift with bewildering rapidity, a random sampling of the January, 1965 position of auxiliaries *vis-à-vis* international political affairs would include:
>
> Opposition to any strengthening of Europe, especially a European army.
>
> Denunciation of the retention of American troops in Europe.
>
> Disapprobation of NATO and SEATO.
>
> Approval of the U.N. veto power for the Soviets.
>
> Favoring abandonment of Berlin and disengagement in Germany.
>
> Opposition of the Federal German Republic and the 'revenge mongers' of Bonn.
>
> Advocacy of diplomatic recognition, and admission to the U.N., of the Peking government.
>
> Agitation for nuclear test bans and disarmament without control agreements.
>
> Condemnation of West European missile bases directed at the USSR, but not of USSR bases directed at Europe.
>
> Censure of the 'feudal and corrupt dictators' Chiang Kai-shek, Moise Tshombe and Antonio Salazar, but praise for the anti-American dictators Fidel Castro, Ben Bella and Achmed Sukarno.
>
> Pressure for the surrender of Quemoy and Matsu to Peiping.

Opposition to the Franco-British action at Suez, but approval of the anti-Franco British action at Baghdad.

Antagonism to Israel, Fellowship of Arab 'Nationalism'; Antagonism to France, Fellowship of the FLN; Antagonism to Britain, Fellowship with the Mau Mau; and in Moslem Kashmir, Antagonism to India.

Promotion of Summit Conferences on any and all occasions.

Endorsement of 'Cultural Exchanges,' but toleration of USSR literary censorship and radio jamming.

Enunciation of Western 'colonialism' and Asia and Africa, with complete silence concerning brutal Soviet colonialism in Eastern Europe.

Opposition to internationally controlled free elections on German unification but endorsement of 'elections' on Vietnamese unification without international control.

Censure of 'dollar Imperialism' anywhere in the World, but loud praise for 'ruble aid' to underdeveloped nations.

Condemnation of American bases in Europe and Asia, but strident defense of Communist parties, which are effectively Soviet bases in all countries.

Obviously many independent minds will, whether logically or fallaciously, arrive at the same position as the Soviets on some individual issues, but it is inconceivable that any but a dominated and disciplined auxiliary will be in systematic and synchronized agreement with all the Kremlin's positions. It is by this consistency that the auxiliary can be recognized." (*The Techniques of Soviet Propaganda,* Senate Document No. 34, 90th Congress, 1st Session, 1967, pages 9 and 10.)

Mr. Fishman has stated that his Customs Service organization reported to Federal agencies an increase in the propaganda material directed to students and youth in this country, that is increasing at the rate of approximately 40% a year. One of the sources is the huge printing plant operated by the Soviet Embassy in Mexico City

for the purpose of preparing and disseminating anti-American propaganda both in this country and throughout Latin America. The American taxpayer is, of course, being compelled to indirectly finance the distribution of this propaganda throughout our country because of the subsidy to the United States Post Office Department.

It would indeed be difficult to find three well-known Americans, the first a scholar and writer, the second a former Chief Justice of the United States Supreme Court, and the third the Director of the Federal Bureau of Investigation, whose views on most topics would be more divergent. But on one thing they are in solid accord, as the following quotations will demonstrate. Dr. H. A. Overstreet, in his book, *The Great Enterprise,* W. W. Norton & Co., Inc., N.Y., 1952, wrote on page 254:

> "We have so recently become acquainted with Communist strategies that we have scarcely as yet begun to work out our own psychological counter-strategies. On the contrary, we have occupied ourselves chiefly with the more familiar strategies of military defense and offense . . . this means, first and last, that we must learn how not to be taken in. We know now, after a number of painful experiences, that Communists who come to the support of oppressed individuals or groups are not primarily interested in the oppressed, but in the use they can make of them as a springboard from which to launch propaganda looking to the overthrow of our system of life."

Former Chief Justice Earl Warren declared that:

> "All those who are devoted to the Communist cause are our enemies, whether they are within or without our country." (*Los Angeles Times,* August 4, 1950.)

It remains for Mr. Hoover, testifying before the House Subcommittee on Appropriations, April 17, 1969, to put the matter into final perspective. He said:

> "Although activities of old-line Communist organizations in the United States have been overshadowed by the militancy of the New Left and racial disorders, the threat of Communism has certainly not diminished. It flows from the Communist Party—USA—

with its blind obedience to the Soviet Union and from the various Communist splinter groups, such as the Progressive Labor Party, the pro-Peking group I mentioned earlier which, in addition to stepped-up efforts to extend its influence on college campuses, has made a concerted effort to take over the national leadership of the Students for a Democratic Society, the militant pro-Marxist anarchistic, campus-based New Left groups; the Socialist Workers' Party; the Workers' World Party; and their affiliates. These organizations seek to transform this country into a Communist state, but differ on the plans to be followed.

The turbulence generated by the New Left stimulated all these organizations into moving forward toward increased militancy themselves. Seizing any pretext as the foundation for a protest demonstration, leaders of these organizations seek to proliferate such demonstration into a massive confrontation with the authorities to generate disrespect for law and order.

A typical example occurred in connection with the coalition group participating in picketing against establishments of the French Government in the United States in July, 1968. In the Berkeley, Calif., area this coalition was led by an official of the Socialist Workers' Party and included members of the Socialist Workers' Party; the Young Socialist Alliance, the Youth Group of the Socialist Workers' Party; Spartacist, a Trotskyite group; and others. The aggressive action taken by this group necessitated a curfew in Berkeley in order to quell the disturbance.

The growing militancy of the old-line Communist organizations was also demonstrated at the Eighth National Convention of the Young Socialist Alliance, held November 28 through December 1, 1968, at Chicago, Ill. The Young Socialist Alliance is the youth and training section of the Socialist Workers Party, a militantly revolutionary Party based on the theories of Marx, Engels and Lenin, as interpreted by Leon Trotsky. Among the nearly 800 in attendance were 7 enlisted men from the U.S. Army and several members of the Students for a Democratic Society, as well as individuals from Canada, Mexico, France and West Germany. Members of the Black Panther Party, a

militant Black Nationalist group, were among the speakers at the convention.

One speaker described those in attendance as being the vanguard of the young students and workers who are called upon to bring the liberating ideas of Socialism to the American people. Another speaker appealed to the group to increase their efforts to reach the G. I.'s, to invite them to participate in demonstrations as a group of 100,000 G. I.'s can make the revolution. At the time of the convention, Young Socialist Alliance members were reported to be located in 101 colleges or universities, 32 high schools and 5 junior high schools.

While all the splinter organizations have their roots in the Communist movement, it is essential that it be clearly understood that there are ideological differences between them, and that all these organizations are not part of the Communist Party—USA. Most of these Communist splinter organizations follow the interpretation of Marxism-Leninism, espoused by the late Leon Trotsky, or Communist China.

The Communist Party—USA, on the other hand, represents that part of the international Communist movement in the United States, which is pro-Soviet. As a result we find the Communist Party—USA, following the line established by the Communist Party of the Soviet Union regardless of the effect that such action will have on the Party's acceptance in the United States. Thus, during the past year, we had Party leader Gus Hall holding a press conference in Budapest, Hungary, in February, 1968, where he declared that United States 'imperialism' was the central issue uniting the 67 Communist and Workers' Parties gathered in Budapest for a consultative meeting. It was also at this time that Hall stated the meeting had unanimously approved a proposal by the U. S. delegation that it send a message of sympathy and support to North Vietnam for its valiant stand against 'American aggression.' "

CPUSA
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VOL. 3 No. 2 Price 25c February 21, 1969

NOTES ON THE RESOLUTION FOR A YCL

Bob Duggan, Southern California District

(This is a revised version of the original document.)

RESOLUTION:

THE NAME OF THE ORGANIZATION BE THAT OF THE YOUNG COMMUNIST LEAGUE. THAT IT OPERATE AS A VANGUARD CADRE YOUTH ORGANIZATION. THE GOAL OF A YCL MUST BE TO BUILD A REVOLUTIONARY YOUTH MOVEMENT, WHICH SEEKS TO ESTABLISH ITS MASS BASE IN THE WORKING CLASS AND SEES AS ITS STRATEGIC GOAL THE DEEPENING OF THE ANTI-CAPITALIST, ANTI-IMPERIALIST CONSCIOUSNESS AND ORGANIZATION OF THE MOVEMENT FOR SOCIALISM. A YCL MUST ORGANIZE THAT MOVEMENT AMONG YOUTH, PARTICULARLY AMONG WORKING CLASS YOUTH. THAT IN THE PARTICIPATION AND CREATION OF DEMOCRATIC MOVEMENTS THAT IT RELATE TO SUCH MOVEMENTS IN ORDER TO ENSURE THE DEEPENING OF CLASS CONSCIOUSNESS. A YCL OUGHT TO WORK AND PARTICIPATE IN THE DEVELOPING OF WORKING CLASS STRUGGLES AND OF THE SHARPENING OF THE CLASS CONTRADICTIONS. THAT IT HAVE A PROGRAMMATIC EMPHASIS ON THE ORGANIZING OF THE UNORGANIZED, THE MOST OPPRESSED SECTOR OF THE CLASS, BLACK, MEXICAN, PUERTO RICAN, AND POOR WHITE WORKERS. IN TRADE UNIONS OUR CADRE WORK WITH THE OBJECTIVE OF BECOMING OPEN COMMUNIST AS SOON AS POSSIBLE IN THEIR ORGANIZING OF INDEPENDENT LEFT CAUCUSES OF YOUNG WORKERS. THAT OUR STUDENT CADRE WORK AS OPEN COMMUNIST IN RADICAL STUDENT ORGANIZATIONS AND MINORITY YOUTH ORGANIZATIONS AS THE MAIN AREA OF WORK ON THE CAMPUSES AND HIGH SCHOOLS. THAT IN THE COMMUNITIES IT HAVE A LONG RANGE VIEW TOWARD INFLUENCING THE MARXIST CONTENT OF NATIONALIST FORMS OF ORGANIZATION.

Every organization must have a clear conception of what its strategic goal is. Failure to have a clear goal in mind will result not in an organization but a movement that is threaded together on the basis of vaguely or implicitly understood issues. It will not be a vanguard organization, not even a leading organization.

It has always been true in a revolutionary movement that every strategic goal has a minimum and maximum program. Moreover, at any particular moment in history, struggle over minimum goals may be sharper and more

PROGRESSIVE LABOR PARTY

Levi Laub, Milton Rosen and Mortimer Scheer were expelled from the CPUSA because they were found guilty of "Left deviationism," which in lay language means that they became impatient with the long-range strategy of the Party. They preferred the Trotsky-Maoist theory of permanent revolution and immediate violent action. When, in the summer of 1960, the rift between Moscow and Peking loomed as real and deep, these leaders, with a considerable following, boldly expressed their sentiments and were promptly ousted.

This splinter group of Marxist radicals then formed their own organization of activists and called it the Progressive Labor Movement. It openly espoused the Red Chinese brand of Communism and engaged in a campaign of violence. Members were sent to Cuba for indoctrination and training; a recruiting campaign brought in a fresh supply of new members and a West Coast headquarters was opened at 2629 Acton Street, Berkeley under the direction of Mort Scheer, who had been an organizer for the CPUSA in Buffalo, New York.

In 1965 the Progressive Labor Movement changed its name to Progressive Labor Party and continues to function under that title. By 1967 the PLP had become so strong and active that the FBI revealed a message of congratulations from the Communist Party of China to leaders of the PLP, that Peking regarded it as "the only revolutionary Marxist-Leninist Party in the United States." (Testimony of J. Edgar Hoover, Subcommittee on Appropriations, Op. cit., page 54; 1965 *California Report,* pages 165–169.)

Cuba was, and to a large extent continues to be, the mecca for the more militant young Marxists in the United States. Castro and the late Ernesto "Che" Guevara are their idols. They were exponents of guerrilla warfare that had been patterned after the Maoist techniques that were successful in China and brought that country into Communist domination in 1949. It has been said that during the post-revolutionary period in Cuba,

Castro's body was figuratively divided, with his heart in Peking and his stomach in Moscow. But while emotional starvation is disagreeable, food starvation is more grimly realistic. So when Castro sought to make Cuba a center from which his revolution would be exported throughout the South American countries, Peking applauded but Moscow began to decrease its material aid. Che Guevara was killed and his small guerrilla band captured during its attempt to subvert a South American country; there were other failures and finally the hot tactic of guerrilla warfare was replaced by the slower, tested, less perceptible tactic of subversion Moscow style: infiltration, propaganda, recruiting and a steady nibbling away at the soft understructures of non-Communist regimes.

From an analysis of the group affiliations of the young radicals who have made the trips to Havana from United States and from the disclosures of those who were disillusioned, we find that while Cuba is still the center for propaganda and training, it has veered closer to the Moscow than to the Peking pattern of revolution.

The national PLP has been immersed in violence almost since its inception. During a meeting at its New York headquarters, 336 Lennox Avenue, January 21 1965, Larry Phelps, a 23-year old graduate student from the University of North Carolina, who had visited in Cuba in 1963, was stabbed to death. Two women who were attending this meeting were also seriously injured. (*New York Times*, January 24, 1965.)

Violence so imbued PLP members that they clashed repeatedly in fights with other radical groups. We know of no instance involving clashes with members of the CPUSA, notwithstanding deep ideological and strategy differences arising from the Sino-Soviet split. On the contrary, these two Marxist groups have collaborated in many united front demonstrations. An example is seen when, among the 120 pickets at the *Los Angeles Herald Examiner* offices at 11th and Broadway, Los Angeles, August 8, 1968, Dorothy Healey and James Dann, chairman of the Los Angeles PLP, walked amicably in the same picket line.

No such collaboration was accorded the Socialist Party members however, as demonstrated by the incident in San Francisco on July 15, 1967, when hot-headed PLP mem-

bers launched an attack. This provoked a letter, which we quote for the purpose of showing how animosity was spreading among some of the radical organizations, notably the San Francisco Socialist Party and the Socialist Workers' Party (Trotskyite Communists) in that city. The letter was as follows:

An Open Letter to The Progressive Labor Party

"On Saturday, July 15, 1967, 8 members of the San Francisco Socialist Campaign Committee, the Young Socialist Alliance and the Socialist Workers Party were physically attacked by approximately 20 supporters of the Progressive Labor Party. The assault occurred while we were distributing literature at a street demonstration on the corner of 22nd and Mission. According to the *San Francisco Chronicle,* the rally had been called by the Mission Tenants Union.

As Socialist candidate for mayor, I was present at the rally, along with a few friends, to distribute my campaign material. I was told by a member of the Progressive Labor Party that if I handed out any literature I would be physically removed and my literature would be confiscated.

I contacted Robert Himmel, local chairman of the Socialist Workers Party, and asked him to come to the rally to get some official clarification from leaders of PLP on what appeared to be a blatant attempt to suppress my rights.

When Himmel and a few other SWP members arrived a short time later, we approached a leading member of PLP, Dennis Mosgofian, in an effort to work out what we hoped was simply a misunderstanding. Himmel was told by Mosgofian that I had lied about the threats and nobody would interfere with us. He told us to 'go ahead and hand out anything you want'.

But when we attempted to distribute our leaflets we were attacked, knocked to the ground, kicked and beaten by about 20 supporters of PLP, including Mosgofian, PLP candidate for S.F. Supervisor John

Ross, West Coast PLP organizer Chris Raisner, and S. F. State PLP Chairman John Levin.

The Progressive Labor Party claims to advocate Socialism. Is this claim supported by beating up candidates running on an anti-war and pro-Socialist platform? What kind of conduct is this? What kind of respect for civil liberties is this from a group advocating Socialism? Socialists should be in the forefront of the fight for free speech!

No one in the radical movement gains from such conduct. Radicals should be united in defending free speech for all. It is a scandal when Socialists have to defend their right to free speech against 'Socialists' who proclaim their socialism by using goon squad tactics to trample on that right.

In the past the YSA and the SWP have consistently fought every effort by the bourgeois state and the right wing to abridge democratic rights. We have fought all attacks, whether they were directly against us, the Communist Party, PLP or anyone else. We will continue to do so in the future.

We fought during the 30's when the Stalinized Communist Party tried to use its superior numbers and influence in this country to smash radical opponents through the use of violence.

Do you of the PLP believe that you can resurrect the methods of Stalin? Or do you think you are the American incarnation of Mao's Red Guards? Do you imagine that Stalinist nonsense about Trotskyists being 'Fascist agents' will get you by in this day and age? By attacking us, you can only make yourselves look ludicrous.

We trust that the national leadership of the PLP rejects such attacks as both unworthy and unworkable. We trust that you will take disciplinary action against those of your members who were involved in this scandalous attack. We trust that a public apology will be forthcoming.

(Signed) ROBERT DAVIS
Socialist Candidate for Mayor
of San Francisco."

The foregoing letter was written on the stationery of the Socialist Campaign Committee, 1733 Waller Street, San Francisco, Calif., 94117. Phone 752-1790.

Swept along by its determined belligerence, its technique of direct action, and its generally defiant attitude against anything connected with what it referred to as "the establishment," PLP grew rapidly. It drew some of the younger members from the Socialist Workers Party and from the CPUSA, opened offices at central points of importance throughout the United States, conducted recruiting campaigns on college campuses, issued an astounding quantity of leaflets, booklets, newspapers and other propaganda that loomed out of all proportion to the membership of the organization and its relatively meager income from dues.

At the height of its success, the PLP placed many of its members in the ranks of another and larger organization of revolutionary youth, Students for a Democratic Society, and when they considered their strength sufficient they launched a drive to take control of this organization. At the same time, in Los Angeles, a similar move was conducted which created a rivalry between the PLP and the CPUSA in the attempts of each organization to bend the Los Angeles SDS to its own objectives. In the ensuing section, dealing with Students for a Democratic Society, we will consider this rivalry in detail, and demonstrate how the superior discipline and the experience of the Communist Party enabled it to prevail, sharply reducing the effectiveness of the PLP and stemming the exodus of young CPUSA members into the new militant youth organization.

Publications and Finances

In 1964 *Challenge* issued Volume I, No. 1, as a weekly from an office at 66 West 109th Street, New York. The editor of this PLP publication was Fred Jerome, and it comprised an 8 page newspaper, the last two pages of which were in Spanish.

A year later the San Francisco PLP issued its publication, *Spark: Western Voice for Revolution* from its office at 3382 18th Street, San Francisco, and carried articles by John Ross, Steve Cherkoss, Jim Carrico and John Hayes. It, too, devoted 2½ of its 8 pages to material in the

Spanish language. Whether the title of this California paper was inspired by the name of the publication Lenin wrote during his exile in Switzerland for the Russian Revolution, is not known. Lenin's paper was *Iskra,* which means "Spark" in Russian. At any rate, the San Francisco *Spark* was extinguished early in 1968 after a relatively short life, and thereafter the PLP news from California was carried for the most part in the Eastern publication *Challenge,* and in the endless leaflets, reports, pamphlets and other propaganda material issued by all of these Marxist radical movements.

We have made some reproductions of several PLP publications to accompany this text as exhibits, and they will serve to give some very slight indication of the great expense incurred in producing the propaganda that spreads the Maoist-Castro brand of Communist Revolution. It seems that almost from its beginning, the PLP was plentifully supplied with cash, the question was, where from?

The PLP has been an exceedingly tough and influential movement, and as it reached the zenith of its power in 1964–1965, its publications were increasing in volume and its members were making the pilgrimage to Cuba more frequently. This was the time when the CPUSA was collaborating with most of the other radical groups of the New Left. In Oakland the Dover Street home of Albert Lima was visited by Bettina Aptheker, who was a house guest there at one time, and other Communists of note, and also by members of the PLP, in one of whom we are especially interested, Yvonne Marie Bond, sometimes known as Geraldine Hightower. Miss Bond does not conceal the fact that she is a Communist affiliated with the PLP. In 1964 Miss Bond, then 23, and a former student at Berkeley, was living at 5225 Miles Avenue, Oakland.

Another resident in the Lima home for several months during 1964 was a parolee from San Quentin Prison, Manuel F. Rodriguez, whose criminal record as set forth in the official documents under number A-19958 is massive. Bettina Aptheker often visited the Lima home while Rodriguez lived there, and indeed was present when the parole officer to whom Rodriguez was assigned made his inspection of the premises at Dover Street. Rodriguez has stated that he frequently met Yvonne Bond, Bettina

Aptheker and other Communists during his stay with the Lima's.

The circumstances by which Rodriguez was released from prison and resided with the chairman of the Northern Division of the Communist Party of California are interesting and intriguing. While Rodriguez was a San Quentin inmate, Albert J. Lima attempted to send him $25.00 as evidenced by a postal money order bearing number 12-71-542-731. It was returned with a letter dated June 12 1962, because Lima had not been approved as a correspondent or visitor. Lima then submitted the required questionnaire giving his occupation as "construction" and his residence as 6115 Dover Street, Oakland.

On September 6, 1962, Helen Corbin Lima filled out a similar questionnaire, her $25.00 money order No. 12-717-544-283 for Rodriguez also having been returned with a letter from prison officials dated July 20 1952. Mrs. Lima gave her occupation as "hospital kitchen worker," Herrick Hospital, Berkeley.

Mr. Lloyd Culardy, who as a representative of a Hospital and Drug Employees Union, interceded on behalf of a parole for Rodriguez, managed to get him a job in a Berkeley restaurant on Shattuck Avenue, and when the parole was granted on July 11 1963, the parolee became a resident in the Lima home. He was not a Communist and had no subversive record so far as we have been able to ascertain. He had met Lima and other high Communist officials while they were confined in the Los Angeles jail on a conspiracy charge, subsequently dropped in 1951. Rodriguez was a prisoner in the same institution for another offense. Then, 10 years later, there was a sudden interest in Rodriguez—the attempts to send him money, the working for his parole, the securing of a job for him, and accepting him in the Lima home where this vulnerable parolee was allowed almost daily contact with numerous Communists—including the one in whom we are most interested, Yvonne Marie Bond of the Progressive Labor Party.

The particular interest in Miss Bond was occasioned by her sudden and mysterious affluence during the early summer of 1964. On May 19 she appeared at the Oakland office of Trans World Airlines, 5225 Miles Avenue, Oak-

land, and paid $12,468.00 in crisp new one hundred dollar bills for transportation for herself and 29 other young people from California to Paris. Later this deposit was cancelled and the money refunded.

On May 22, 1964 Miss Bond registered at Gramercy Hotel, New York City, and telephoned Lee Coe, 840 Delaware Street, Berkeley. Coe had been a well-known member of the CPUSA in the Bay area, served a term as labor editor of the *Peoples World,* and was now working on the editorial staff of *Progressive Labor,* one of the early publications for PLP.

On May 23 Yvonne Bond and Morton Slater appeared at the office of Travel Associates, New York City, requesting information concerning the price of tickets and flight schedules from New York to Paris.

On May 25, Monday, Miss Bond and Mr. Slater returned to Travel Associates and deposited 47 crisp, new one hundred dollar bills in part payment for tickets for 28 students from San Francisco to Paris, a part of the deposit being 3 one dollar bills and 30 cents in change and a cashier's check for the balance of $12,450.00.

On the same day, May 25, 1964, Miss Bond and Mr. Slater visited Pan American Airways office in New York, where Slater paid $10,420.00 in cash for tickets from Chicago to Paris with crisp, new one hundred dollar bills.

On May 26, Mr. Slater went to Foreign Tours, Inc., New York City, and purchased transportation for a group of young people from New York to Paris and paid for the tickets with crisp, new one hundred dollar bills.

Due to the alertness of one of the individuals with whom these transactions were conducted, the serial numbers of the bills were noted and a telephone call was made to the New York field office of the Federal Bureau of Investigation. The numbers were K3735411-13; K3735431; K3735442-48; K3735605-31; K3735633-41. They were immediately traced, of course, and were found to have been shipped to the San Antonio Branch of the Federal Reserve Bank in July 1962. The money was held there until April 20 1964, when they were issued to the First National Bank of San Antonio. On that same day they were included in the shipment of one million dollars made to the Banco de Mexico in Mexico City by the First National Bank.

Investigations of this entire matter were made by the House Committee, an independent investigation made by us, and one by the Federal Bureau of Investigation, which we need hardly add was conducted independently of the other two.

Thus, we know that suddenly Miss Bond received some money from Mexico, that it amounted to a large amount in new one hundred dollar bills, that she purchased tickets for "students" and members of the PLP to visit Cuba, because, as she admitted, the flight departed from Kennedy International Airport, New York, on June 10, 1964 for Paris; thence on Air France, flight 010; thence by Czech Airlines, flight 508 to Prague, Czechoslovakia on June 11, 1964; thence to Havana, Cuba on June 11 via Cubana Airlines, arriving at Havana Airport on June 12. The departure from Havana was made August 12. During their stay the visitors conferred with officials of the Cuban regime and other Communists from various countries before returning to Kennedy International Airport on August 14, 1964 via Prague and Paris.

The foregoing account serves to illustrate the collaboration between the PLP and the Communist Party in 1964, and that the California unit of the PLP was so highly regarded that Miss Bond was trusted with the money from Mexico and the making of arrangements for transportation of these young radicals from the United States to Havana for indoctrination and training. She went to the Oakland TWA office on May 19, 1964, and the Rodriguez parole had been canceled four days previously and he was back in prison again. He has declared that he found out where Miss Bond got the money—but although we have corroborated some of his statements, and although the records show that he told his story to the FBI, much of it remains to be verified, which in view of his instability in other respects will require a vast amount of time and work. It must be pointed out, however, that Lima considered him sufficiently stable to send him money, arrange for his parole, get him a job, receive him in his home, and permit him to have contacts with the constant stream of visitors to the premises at 6115 Dover Street in Oakland.

From the first issue of *Challenge,* all of the PLP propaganda was keyed to a vicious attack against the police,

urging the Black people to take to the streets and smash the class enemy. A Black Liberation Commission was established, and issued its own highly incendiary appeals—replete with pictures and cartoons. The first issue of *Challenge,* dated June 11, 1964, carried a blazing red headline "POLICE WAR ON HARLEM" with tales of alleged sadistic tortures of black victims by law enforcement officers. These all-out drives to incite the Negro and Latin American minorities continued, interspersed with the usual line on Vietnam, attacks on big business, on landlords, and even against some Communist-controlled fronts. The collaborations with the CPUSA had cooled down as the Sino-Soviet split heated up. Thus, in *Spark,* December, 1967, the California PLP organization, took after the Peace Action Council of Los Angeles as follows:

> "In contrast to Corky Gonzales in Denver, and Lopez (Reies) Tijerina in New Mexico, the East Los Angeles Peace Committee and the Peace Action Council have ignored the oppression of working people here and have not tried to lead a fight against imperialism in their own community as well as in Vietnam. They turn their backs on the struggles of the people all around them, while they claim to be concerned about the struggles about the Vietnamese.
>
> They are afraid to tell the people the truth, that the big businessmen and their government make huge profits off the war and the oppression of the Vietnamese, just as they do off the oppression of the working people here, including the Mexicans and Black people."

This mounting antagonism was repeated in *Challenge* for March, 1968, in an article on page 17 headed " 'New Party' is C.P. Planned to Rule or Ruin New Left," asserting that "C.P.'s guiding principle is 'if you can't beat them, get in there and control them.' " The article continued with the Maoist line that the CPUSA had betrayed Marxism by holding that "class interest is the basis of politics," and declaring that "the Progressive Labor Party has always maintained that Black radicals must base themselves on organizing Black workers to lead the broad Black Liberation struggle, just as White

radicals must base themselves on organizing White workers."

But while the PLP was attacking the Communist Party for its well-known device of infiltration and control, it was doing precisely the same thing in a drive to infiltrate and control the large and violent Students for a Democratic Society. And it is ironic to note that when the power play was made by the PLP during the 1969 SDS Chicago Convention, the position that turned the tide against the effort was the PLP attack on the Black Panthers; surprising indeed after the propaganda urging Black radicals to militant action. But the detailed discussion of this futile power drive properly belongs in the following section, dealing with Students for a Democratic Society.

The most ambitious and expensive PLP publication was *Progressive Labor* at 50¢ a copy, a thick magazine lavishly illustrated and a good part of which was devoted to praises of the "Great Proletarian Cultural Revolution in China," and citing Mao Tse-tung's definition of Revolution: "A revolution is an insurrection, an act of violence by which one class overthrows another." (Vol. VI, No. 2, Nov.–Dec., 1967.) Some of the featured articles in this issue of the magazine are: "Power in the University" by John Levin, PLP student organizer at the University of California, page 35; "The Great Delano Grape Strike," page 45, and "We Must Rule the Schools," page 50. The latter article was also considered sufficiently important to be reprinted in booklet form and widely disseminated throughout the country.

Local Meetings

As Students for a Democratic Society has spread and flourished, the Progressive Labor Party has declined in size and influence. This is not to say that these followers of the Red Chinese attitude towards violence are not among the most dangerous and active radicals in our country today, who continue to devote themselves to the use of force and violence to destroy our way of life, and whose dedication to revolution through disruption continues unabated. Meetings and training classes are usually held in private homes, attended by an average of ten to twenty members, and are uniformly reported as dull

and uninspiring. The lectures at public meetings such as the Progressive Labor Forums are however more fiery and speakers are more able and effective than those at the smaller gatherings.

During 1967 and 1968 training classes and meetings were held in Southern California at the following addresses: 448 North Westmoreland, April 22, 1967; 4920 South Figueroa Avenue, Los Angeles, November 3, 1967; House Meetings and Training Sessions at 1169 South Mullen Avenue, Los Angeles, December 15, 1967; 1617 East Palmer Street, Compton, January 28, 1968; 1004 Lake Street, Venice, February 11, 1968; 1121 South White Avenue, Compton, February 25, 1968; 1617 East Palmer Street, Compton, March 10, 1968; 1004 Lake Street, Venice, March 14, 1968; 1617 East Palmer Street, Compton, April 11, 1968.

At these meetings there was much discussion of the Communist movement in the Chinese Peoples Republic, many copies of Mao Tse-tung's little red plastic volume, such as "The Sayings of Chairman Mao," and "Chairman Mao Tse-tung on Peoples War," posters, propaganda pamphlets and other written material were constantly being circulated and studied. Outlines for study at the training classes consisted of red, yellow, orange and blue documents, with page citations, and photocopies of the curricula for some of the early classes of PLP disclosed that they covered a wide variety of topics. Some of them were: "Road to Revolution, Peoples Art in China, Worker-Student Alliance, Students and Liberalism, Anti-Imperialist Groups Must Fight, The Plot Against Black America, The Revolt in Watts, PLP Community Work, PL Trade Union Program, U.S. Workers, A Force for Revolution."

As we have seen, there were delegations of PLP members travelling back and forth between Cuba, Czechoslovakia, and other Communist countries, constantly keeping up their enthusiasm through contacts with world Communist leaders, and attending indoctrination and training classes abroad. Red China was also encouraging its young admirers in this country, as shown by statements appearing in the *Hsinhua News Agency,* China News Service, Kandachuo Building, 20, 3 Chome Kanda, Nishikicho Chiyodaku, Tokyo. This address is simply

an outlet for Red Chinese propaganda, as also is the one used by the News Agency in Hong Kong. They come into this country as part of the propaganda flood that continues unchecked under existing law, and we conclude this section on the Progressive Labor Party by quoting material from the *News Agency* dated January 12, 1969, and March 31, 1969, as follows:

> "Peking, January 8,—an ordinary staff member of the U.S. Progressive Labor Party has justly denounced the criminal capitalist system in an enemy court and expressed his determination to thoroughly bury that system by means of violent revolution, according to the November issue of *Challenge,* organ of the Party.
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> Eric Johnson, PLP's West Coast Trade Union organizer, and his comrades-in-arms were regarded as a thorn in flesh by the U.S. Ruling Circles because they actively organized the masses to wage political struggles against police brutality and against the war of aggression in Vietnam. The reactionary San Francisco authorities put Eric Johnson and six other persons on a legal trial last September and flagrantly sentenced to one year on the charge of 'assaulting a police officer'.
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> Answering the Judge's interrogations in Court, Eric Johnson declared resolutely that he was fighting for the end of a system that is based on profit and that to do it he would resort to whatever means necessary, including violent means, because those who hold the system 'are holding it by whatever means they have to hold it, one of the means by which I find myself in this courtroom.'
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> When the Court vainly lulled his struggle by reminding him that he had a wife and child, Eric Johnson said firmly, 'I hope my child grows up to fight these Courts in the same way that I have; and I hope that my child takes it up the same way I have.'
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> The Judge tried to intimidate him into 'admitting his error', but Eric Johnson reported that he was 'resisting and interferring with the attack that was made upon the people that I know and have worked with.'

He said: 'Those who attack me and attack the rest of us were sent there by those who are really guilty in this society, men who stood above you in judgment, people that make billions out of all the people in the world, who squash the people in this world into blood, and they think they can get away with it forever and they think they can get away with putting people in jail and attacking people. There must be a movement to smash them, (that system and the people that run that system) forever, to run them off the face of the globe,' he stated." (*Daily, News, Release,* Hsinhua News Agency, January 10, 1969.)

The second reference to the Progressive Labor Party in the United States is headed "American Progressive Labor Party Leader on Party Building," and appears in the *News Agency* for March 31, 1969, pages 26–27. It carries a March 21 dateline from Peking, and praises Bill Epton, a functionary of the PLP in the United States, for calling on young radicals to overthrow the system of government in the United States. And quoting chairman Mao as follows:

"If there is to be a Revolution, there must be a Revolutionary Party. Without a Revolutionary Party, and without a Party built on the Marxist-Leninist Revolutionary theory and in the Marxist-Leninist Revolutionary style, it is impossible to lead the working class and the broad masses of the people in defeating imperialism and its running dogs."

Epton is further quoted as writing in his article for the February 1969 issue of *Challenge,* that:

"The United States imperialist system is the most ruthless and vicious system in the world today . . . It has a history of murder, plunder, oppression and exploitation. It will not give up easily and just stop this exploitation of the people of the world and of the working class here at home . . . It is because of the solidarity, unity, discipline and guidance by the science of Marxism-Leninism that our small Party, that is scarcely four years old and learning from its mistakes, has already taken on U.S. im-

perialism boldly and has lead and participated in many struggles of the working classes, both Black and White. It is because we are being trained in the revolutionary science of Marxism-Leninism and are struggling to put it into practice that we are beginning to have a definite impact in the struggles that affect the lives of the American people."

This same publication carries messages from the Central Committee of the Chinese Communist Party; from the Central Committee of the Communist Party of Burma; from the Vice-Chairman of the Central Committee of the Communist Party of Burma; from the Revolutionary Communist Party of Chile; the Marxist-Leninist Party of France; the Marxist-Leninist Communist League of Sweden; the Mongolian Revolutionary People, and the Communist Party of Brazil. The tenor of these readings and the texts that accompany them is condemnation of the Soviet Union for betraying the philosophy of Marx and Lenin, and pointing out that only the Red Chinese Communists are the true followers of that ideology, together with their supporting organizations throughout the various countries of the world where the Maoists have managed to maintain organized groups.

It must be emphasized that the mere fact that occasionally the CPUSA, the Trotskyists, the Maoists, and other radical Marxist groups see fit to collaborate in a united front activity, by no means should indicate that the deep ideological animosity that sets them against one another, sometimes in hand-to-hand combat, is not always smoldering and ready to burst into flames when the provocation arises.

PROGRESSIVE LABOR PARTY
EXHIBIT I

STUDENTS AND REVOLUTION

What is the

PROGRESSIVE LABOR PARTY

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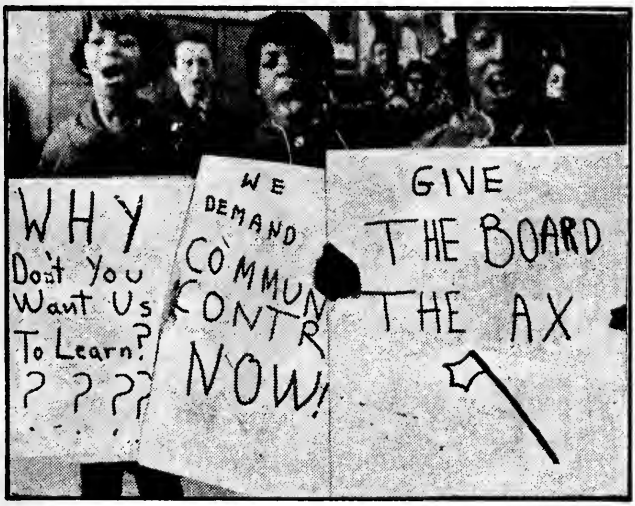
PROGRESSIVE LABOR PARTY
EXHIBIT II

WE must rule the school



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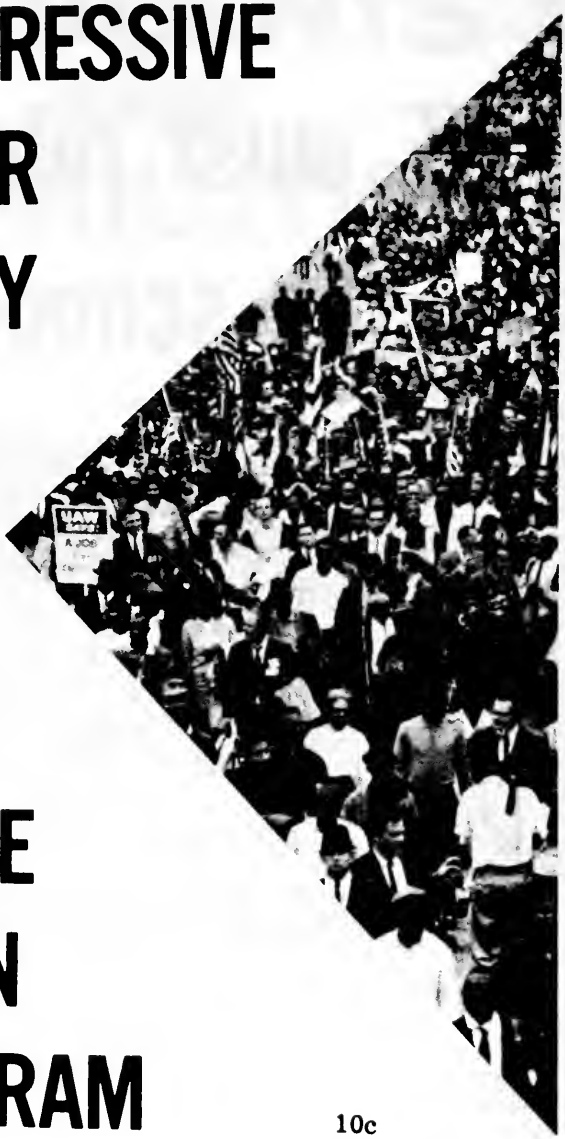
PROGRESSIVE LABOR PARTY
EXHIBIT III

PROGRESSIVE LABOR PARTY



TRADE UNION PROGRAM

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STUDENTS FOR A DEMOCRATIC SOCIETY

The inception, organization, officers and activities of SDS has been set forth in previous reports. To recapitulate briefly, it commenced as the Youth Section of the old League for Industrial Democracy, which had its origin some 50 years ago. In 1960 this youth division changed its name to Students for a Democratic Society and reorganized at a convention held at Port Huron, Michigan, two years later. A declaration of purposes and principles had been prepared by Tom Hayden, a founder and national president of SDS. It was adopted enthusiastically at the Port Huron convention and has since served as the manifesto for the movement.

Communists and "Right Extremists" were at first barred from membership, but the ban against members of all radical Left groups was soon lifted, and young members of the Communist Party, Socialist Workers' Party (Trotskyites) and Progressive Labor Party gave added impetus to SDS, which was already growing with surprising speed. This influx led to participation in united front demonstrations with other organizations and paved the way toward eventual arguments over ideological matters, splits and cliques and drives for power. This was, of course, inevitable because of dual memberships in SDS and other radical organizations, and to allegiances stemming from older affiliations. The SDS rapidly became vastly larger than the other New Left groups, or Old Left, for that matter, and presented a tempting target to be hit by the old device of infiltration and capture of key positions.

By 1966 the membership included advocates of "Participant Democracy," those who preferred to accomplish social and political change by persuasion and non-violent means, orthodox Socialists, hippies, Maoists, Communists, Trotskyists, and an influential group that urged blowing up the Establishment first and worrying about replacing it later. Inexorably the organization was being divided into moderate and violent revolutionists.

The League for Industrial Democracy looked aghast at the antics of its offspring; it had always opposed and resisted radical totalitarianism, and when SDS removed its ban against Communists, the parent bade it a firm farewell.

After the founding conference at Lake Huron, SDS members returned to their respective campuses and embarked on an ambitious campaign with the primary objective of "radicalizing the students." (*A Study in Marxist Revolutionary Violence: Students for a Democratic Society, 1962–1969.* By J. Edgar Hoover. *Fordham Law Review,* December, 1969.)

During the next two years, most of the activities were in the Civil Rights and Community Project areas. After the Berkeley rebellion of 1964 and trips abroad to Communist countries by SDS members, the attention of the organization was shifted rapidly to violent demonstrations at one campus after another. This change was also accelerated, obviously, after the rescinding of the ban against Communists and the influx of new members whose ideas were far more radical. They demanded immediate and violent action, and their influence was considerable.

Gerald W. Curt, undercover FBI informant, has testified that he was admitted into the CPUSA, largely because of the hard work he had done as a SDS member for the past several years. The Communists instructed him to remain in SDS and strive to gain an influential position.

In 1968 SDS launched a nationwide campaign to radicalize high school students. An underground newspaper, *The Free Student* appeared in May, and announced that it was being published as an underground organ by High School Students for a Democratic Society in the Los Angeles area "to unify high school students" and above the announcement was a picture of a clenched fist and the caption "resist". This publication carried news from various high schools in the Los Angeles area and publications issued by SDS indicated that this was one of its major projects in California. A Los Angeles regional newsletter carried an item entitled "SDS Summer in LA," by Jim Fite, on page 1, stressing the need to organize high school students and declaring that SDS chap-

ters "should begin to prepare to relate to high schools in the Fall. The regional office, under the direction of high school SDS, should begin weekly classes with chapter representatives to produce a program for Fall high school work." On October 13, 1968, the SDS National Council met on the campus of the University of Colorado at Boulder, and voted to stepup recruiting on high school campuses, plan demonstrations simultaneously in major cities and adopted resolutions toward those ends that had been prepared by Bernardine Dohrn, National Organizational Secretary, and John Jacobs and Jeff Jones of New York. (*Los Angeles Times,* October 14, 1968.)

In describing the rapid growth of SDS, J. Edgar Hoover wrote:

> ". . . A scant two years ago, few Americans had heard of Students for a Democratic Society. Today these initials are the trademarks of a movement whose members have developed into embittered vociferous revolutionaries who have ignited many campus insurrections. They have nothing but contempt for this country's laws.
>
> Here is a new type of extremism, an extremism all the more dangerous because it emanates from a group of young people (many of whom are highly trained academically) whose bitterness against this country is so intense that many of them want blindly to destroy without much (if any) thought as to what is to emerge from this destruction. Their ill will is guided more by whim than plan, more by cynical pessimism than by hope for a better future, more by the spiteful revenge of the frustrated than by dedication to a noble cause. A type of youthful barbarism seems to have taken hold of this minority (SDS being an extremely small minority of our college generation). Danger arises from the fact that these people, in their hatred and anti-intellectualism, will cause great damage not only in the academic community but also in society as a whole." (J. Edgar Hoover, Fordham Law Review, op. cit., page 3.)

The change of SDS from an organization of college youth, largely from upper-middle class families interested in civil rights and community projects, into a militant

movement that has now become one of the most dangerous revolutionary threats to our national security is too obvious to warrant additional comment by us. To recount all of the violent demonstrations SDS has caused in California during the past two years would be useless here; the press, TV and radio accounts have provided details of these occurrences. It is essential, however, to understand thoroughly that these revolutionary acts are fully supported and encouraged by constant contact with foreign revolutionaries, and that despite internal fights there appears no likelihood that the violence will abate during the coming months.

New Left Notes is the official organ of the national SDS, issued from its headquarters at 1608 West Madison Street, Chicago. A few quotes from its columns will suffice to set the pattern of SDS plans. Thus the issue for August 12, 1968 illustrates the utter contempt SDS exhibited at UCLA toward an official disciplinary body at that institution, in its complete double standard of intolerance for the views of other student groups. SDS had been banned from all campus activities for tearing down what it described as "A racist display of pictures depicting war atrocities supposedly perpetrated by the National Liberation Front against the Vietnamese people. The display was put up by the Thomas Jefferson Club, a Right-wing patriotic group on the campus. SDS ignored the disciplinary proceedings and refused to recognize the Board's authority."

Bernardine Dohrn, inter-organizational secretary for SDS, was the author of an article entitled "Revolution in the Army," which appeared on the front page of *New Left Notes* for January 22, 1969. Miss Dohrn was indicted with other SDS members recently by a Chicago Federal Grand Jury for alleged violation of the anti-riot law, in that she was charged with conspiring to foment violent disturbances in Chicago last October. Her article was an interview with two recently discharged soldiers who had served in Vietnam, and was a propaganda assault calculated to foment disruption in our armed forces.

On February 21, 1969, the paper displayed a photograph of a student raising his clenched fist in the Communist salute, which accompanied an article by Jeff Jones and Douglas Norberg entitled "Mission High Rebellion,"

dealing with the student uprising at this San Francisco high school and praising the rebels, attacking the administration and the police, and showing the results of the SDS program of indoctrination in high schools throughout the state and nation. Jones was one of those indicted with Bernardine Dohrn for conspiring to violate the Federal anti-riot law.

The Berkeley strike by racial minority groups was heralded on the front page of *New Left Notes* for February 28, 1969, with a picture showing one of the demonstrators throwing a cherry bomb at a store window and describing the overturning of police vans by rioting mobs on February 20.

New Left Notes for March 13, 1969, featured articles entitled "Mexican Movement Fights Continued Repression," by Bob Stewart, chairman of the Chicago Revolutionary contingent, and one entitled "L. A. Schools Blow Out," the latter article reading in part, as follows:

> "Demanding an end to police occupation of the schools, more than 20 Los Angeles schools (including junior high schools, high schools, and junior colleges) 'blew out' last week after police and students fought at Carver Junior High.
>
> The blow-out grew out of a week-old strike at all-Black Southwest Junior College in the southside ghetto. The newly-built ghetto school, hurriedly built after threatened actions by the Black community, obviously couldn't meet that community's needs for quality education. The Black Students Union (BSU) at Southwest called a strike March 7, demanding, among other things, a Black studies program and an end to the school's racist practices.
>
> Forty-one of the 64 teachers formed a racist caucus and refused to teach as long as they were 'intimidated' by the Black students at the school. The remaining teachers organized a radical caucus and offered to teach 'liberation classes' called by the students.
>
> . . . The student government at LACC (Los Angeles City College), composed almost entirely of members of BSU, UMAS and SDS, turned over $92,000.00 in student body funds to the bail fund for the striking students. In a state of panic, President Gooder offered concessions to the strike committee.

He offered to issue a public statement in sympathy with the Carver Junior High students and promised to 'humanitarianize' the police science department, the long range target of the LACC student movement.

In response to Gooder's offer, the strike committee issued the following statement: In order to show good faith so that negotiations of campus and social issues might be won, we demand the following:

I. All barricades remain intact by the order of the President.

II. The College President and other administrators must join in the Peoples' Cause and stand with the people on the barricades.

III. The above stand as pre-conditions to negotiate existing demands. We find these terms necessary because of the long history of dishonesty on the part of the administration."

In 1968 the Los Angeles regional office of Students for a Democratic Society, then located at 510½ Hoover Street, Los Angeles, issued a document signed by field secretaries Michael Klonsky and Paul Shinoff, announcing that SDS was planning a ten-day program, April 20–30, which would be coordinated with national and international anti-war activities. Enclosed with the announcement was a document entitled "SDS—Ten Days of Resistance, a Program for the Spring," by Carl Davidson, former National head of SDS, and Greg Calvert, a member of the national committee. This document read in part:

"SDS will initiate a call for a ten-day program of actions in resistance to the war in Vietnam, centering on the period of April 20–30. The action will be subsumed (sic) under the title of 'Ten Days to Shake the Empire,' and/or 'The International Weeks of Resistance.' A variety of targets for direct action on and off the campus, as well as the tactics for dealing with them will be chosen, not only for their moral symbolism, but mainly for their effectiveness in developing a more sophisticated political consciousness regarding the operation of American imperialism at home and abroad. Where possible and appropriate, financial and corporate industrial targets should

be attacked, rather than a single aspect of imperialist repressiveness, such as the Selective Service System. This is essential if we are to develop a focus on the economic aspects of corporate capitalist imperialism. The cooperation of NACLA and other radical research groups should be solicited to help pinpoint these targets.

The international aspects of the program should be developed I) through coordinated speaking tours by those who have travelled to North Vietnam and Cuba and, II) through encouraging anti-imperialist youth groups abroad (e.g. German SDS, French UNEF, Japanese Zengakuren, etc.) to plan direct action in their own countries to coincide with ours."

Visit of Karl Dietrick Wolff—German SDS

In 1969 the Los Angeles regional office of Students for a Democratic Society announced that it would present Karl Dietrich Wolff, President of German SDS, on a speaking tour in this country. Among his engagements was one to appear at the regional office of SDS, then at 619 South Bonnie Brae, Los Angeles, on the evening of Saturday, March 1. SDS, in German, stands for "Socialistiches Deutsches Studentenbund," a loose movement of revolutionary sections much like Students for a Democratic Society in the United States. The background of Mr. Wolff and his personality are intriguing. He was born on February 27, 1943, at Marburg, Germany, and visited this country as an exchange student during 1959–60, but only for a total of one year. He was President of the Socialist German Students Federation, a militant Left-oriented student organization, attended the Ninth World Youth Festival at Sophia, Bulgaria, is a colleague of Daniel Cohn-Bendit, one of the leading Socialist revolutionaries in Europe, and sat with the latter during his trial in West Germany in January of 1969.

On his tour of this country, sponsored by Students for a Democratic Society, Mr. Wolff spoke at the following educational institutions and organizations:

February 25, 1969: Western Washington State College, Bellingham, Washington, where he professed to be

a Marxist and attacked the United States as being run by fascists and imperialists.

February 28, 1969: Radical Student Union, Berkeley campus, a recognized student orgnization.

February 28, 1969: Glide Memorial Church, San Francisco.

February 28, 1969: Stanford University.

March 1, 1969: SDS Regional Office, Los Angeles.

March 3, 1969: California State College, Los Angeles.

March 3, 1969: Los Angeles City College, and during his speech on that occasion he referred to the Los Angeles Police Department as being composed of "pigs."

March 6, 1969: University of Colorado, Boulder, Colorado.

March 6, 1969: Arrived in Lansing, Michigan, under the name of W. Benjamin, on North Central Airlines Flight 974, and spoke that night at Wells Hall, Michigan State University.

March 8, 1969: University of Michigan, Ann Arbor, where he stated that his tour had been arranged by Bernardine E. Dohrn, national officer for Students for a Democratic Society, and stressed the necessity for forming an international revolutionary alliance.

March 9 and 10, 1969: University of Detroit and Wayne University, Michigan.

March 11, 1969: George Washington University, Washington, D.C.

March 12, 1969: Columbia University, New York City.

The United States Senate Subcommittee on Internal Security questioned Wolff on March 14 and 18, 1969, and on that occasion the attorney for the witness was Mr. Michael Tigar, formerly identified with radical organizations at Berkeley and presently teaching law on the faculty of the Law School at UCLA. An example of Wolff's incredible defiance, arrogance and insulting manner may be gathered by his answer to a single question, although his entire testimony was one of complete contempt for the Senate Subcommittee, and resulting in a situation that will make his return to the United States difficult indeed. The question was: "Your name is Karl Dietrich Wolff?" The witness responded, "You Mr. Senator, and your like, are just a bunch of criminal bandits.

I have certainly not come here today to serve any of your dirty purposes. We know that we are not alone." (Transcript of testimony, Senate Subcommittee on Internal Security, Washington, D.C., page 7.)

Infiltration of Labor

The Communist Party press during 1969 urged members of the CPUSA to infiltrate and agitate in the ranks of organized labor and large industrial organizations. This new directive was originally announced by Gus Hall and thereafter repeated in several issues of *Political Affairs* (Political Affairs, March, April, 1969.)

The Communist newspaper, *Daily World,* for Thursday, April 24, 1969, page 6, carried an article entitled "Labor—Students Turn to the Factories," by William Allan, and datelined Detroit. It read in part:

> "Hundreds of students this summer, sparked by Left-wingers on the campuses, including the DuBois Clubs and Students for a Democratic Society, among others, are lining up at factory gates for jobs. SDS has told its members to go into the shops and work for a student-worker alliance."

Throughout the summer of 1969 SDS members, hair neatly cut, suitably dressed for the occasion, did apply for jobs in accordance with the new directive, but the effort was almost entirely unsuccessful. To begin with, organized labor throughout the United States has always been wary of any organized group attempting to interfere with its structure and operation, and union officials had ample warning of the attempted infiltration. Industrial corporations alerted their security facilities and took steps to resist the disruption of their activities, and a good number of SDS members who had worked for several months at a respectible wage appeared to lose some of their revolutionary zeal and became more interested in performing their new jobs than in radicalizing their fellow workers. As a result, SDS has quietly withdrawn from this type of activity and has resumed its disruptive activities against university campuses, agitprop activities within the armed forces, violent street demonstrations, agitation among racial minority groups and a general campaign of subversive propaganda. As illustrated by the mob vio-

lence near the Santa Barbara campus of the University of California, following the speech by William Kunstler, and the blowing up of the Bank of America branch nearby, it became clear that instead of sending activists inside banks and similar capitalistic organizations, the mob had decided upon more direct means by disrupting these institutions from the outside.

An SDS paper entitled "Work-In this Summer Against the War and Racism," casts considerable light on this work-in experience:

> "This summer many of us will be getting jobs in offices, summer camps, factories and stores in various cities throughout the country. Most of us need this money to help pay for our college education or other expenses. But we also want to devote a lot of time this summer working to get the U. S. out of Vietnam and fighting racism. The need to have a job and the desire to do political work are not incompatible. We can, in fact, do both.
>
> Last summer a couple hundred radical high school and college students in Boston, New York, Chicago, San Francisco and other cities took part in what was called a 'work-in'. Its aim was to use the situation of our jobs—a situation which brought students into close day-to-day contact with the working people—to put forward our ideas of the war in Vietnam, the ghetto rebellions and student demonstrations. We also wanted to learn in return whether or not workers are bought off and impossible to talk to and also to learn how the majority of the American people live.
>
> Our experiences were generally good, and this summer the work-in promises to be much larger. We felt that since workers make up the vast majority of the American people and since the draft, taxes, inflation and day-to-day job oppression weigh most heavily upon them, they can and must be reached and brought into the movement that aims at serious social change in America. The 'work-in' will give us the chance to talk with working-class high school students whom we usually don't get to know. Many of these ties could last into the school year and help us in our high

school organizing. This summer the 'work-in' can help with community organizing projects by talking to people at work about it.

We found that we had as much to learn from workers as we had to offer. We found that, although they were often racists and anti-Communists, they were also often knowledgeable about who runs the country and responsive to our ideas. We tried not to just spout off about our politics as if we knew it all; we avoided being stereotyped as the 'student with the crazy politics.' Instead, we learned a lot by listening about the concrete situation at the plant or factory, and we tried to relate our ideas to the grievances people actually felt. For example, when workers complained from their lifelong experience that the boss didn't give a damn about anything but profits, we asked how it was possible to believe that those same bosses had gone halfway around the world to Vietnam to help working people there.

Those of us who worked-in last summer came away with many changed attitudes towards the workers. We decided that the problems of reaching them lie more within ourselves than with them, and that we must rid ourselves of attitudes of superiority. We felt that it was not a matter of figuring out how to talk to them—but of rooting our ideas in concrete realities of life. And as we did this, our own commitment to fight in the people's interest was strengthened. Now, when workers go out on strike, as telephone workers, sanitationmen, copper miners, and others have done recently, we see this not as a greedy attempt to get a larger slice of the pie, but as militant people fighting to get or keep a decent standard of living that is being undermined by the war, taxes, inflation, speed-up, etc.

If you can't work-in, it might be a good idea to go to summer school to keep in touch with large numbers of high school students. The work-in will also have various kinds of meetings, sometimes with speakers, that you could attend. Some support work (like leafleting) will be needed and starting this summer. *The National High School Newsletter* of SDS will start coming out again, with articles about high school or-

ganizing, high school student experiences on the work-in, poetry, national and international politics, etc.

Get in touch with us for more information and also subscribe to the high school SDS newsletter.

CONTACTS: Stephen Lippman, 11427 Waterford Street, Los Angeles, California 90049
Stuart Rose, 50 Green Park, Newton, Massachusetts 02158."

The 1969 Chicago Convention

At the Michigan State University Convention in 1968, the Progressive Labor Party almost gained control of the eleven-member National Interim Committee, which is actually the body that makes the decisions and sets the pattern for SDS action, assisted by the national officers. As we have explained, this incipient clash between the Maoists PLP and the rest of the SDS membership had been brewing for some time, and when the National Convention was held in Chicago during June 19–22, 1969, the all-out drive for power was launched by the PLP faction.

National SDS secretary Mike Klonsky, before deciding on Chicago for the 1969 convention city, had complained about being turned down by the University of Chicago, Southern Illinois University, University of Wisconsin, University of Buffalo and Cornell University. As matters turned out, it was well for the Klonsky group that the convention was finally held in Chicago, since that was the national headquarters for the organization, and of course the records and files of SDS were relatively secure in its national office.

On Tuesday June 19, 1969 the convention opened in Chicago's coliseum annex. Security guards wearing green arm bands barred reporters—though there were several who managed to slip in. After the one thousand delegates were called to order, the PLP commenced its factional activity. Hostility between the evenly-divided factions often provoked loud demonstrations, but the first preliminary contests were in the form of position resolutions and were won by PLP. Then came their criticism of the Black Panther activities, and the national officers of SDS, led by Mike Klonsky and his followers, walked out. This

left the militant Maoist PLP members very little besides a half empty hall. Klonsky's group unquestionably gained an advantage in that they retained possession of the membership and mailing lists, official documents and financial records of the organization, although both factions elected officers under the SDS name.

The Klonsky group elected Mark Rudd, Columbia University, National Secretary; William Ayres, University of Michigan, Educational Secretary; Jeff Jones, San Francisco State, Inter-organizational Secretary; National Committee members were Mike Klonsky, Robert Avakian, Barbara Riley, Bernardine Dohrn, Knoll Ingiton, Howard Matchinger, Corky Benedict and Linda Evans.

The PLP group elected John Pennington, Harvard, National Secretary; Allen Spector, New York, Educational Secretary; Patricia Forman, San Francisco State College, Inter-organizational Secretary; National Committee members were Mike Golash, Sandy Meyer, Fred Gordon, Jarad Israel, David Russell, Ed Galloway, Westley Lincoln and Becky Revis. (See: *Human Events,* July 27, 1968; *Los Angeles Times,* June 7, 1969; *San Francisco Examiner,* June 19, 1969, June 24, 1969; *Combat,* August 1, 1969.)

Formal action was eventually taken to expel from SDS all members belonging to the Progressive Labor Party and their supporters, accusing them of opposing the National Liberation Front, disruption of the organization, positions contrary to those adopted by the SDS National office leadership, and because of criticisms made against the Black Panther Party and its activities.

This action was taken after the Klonsky delegation had left the meeting place, and held its own gathering in an adjacent room. Thereafter some of them returned and the Resolution of Expulsion was read and elaborated upon by Bernardine Dohrn, SDS Inter-organizational secretary.

John Pennington, the new National secretary of the ousted PLP group, declared that his organization would be more militant than ever before, would back the Black Panther Party in its most violent activities, and declared that they would continue to function under the name of Students for a Democratic Society. We fully realize how extremely confusing it is to continually refer to the names

of these subversive organizations that have proliferated so rapidly throughout our country during the last three years. As they factionalize, liquidate, create new fronts, and engage in forums, discussion groups, indoctrination schools, and splinter groups, the confusion is unavoidable. We have endeavored to make our references to them as clear as possible, but the circumstances will not permit us to do more than refer to them by their initials, occasionally using the full names in order to remove any doubt about the organizations to which we refer. Thus, we now come to still another split, the National Office Group led by Klonsky, taking its name from a song by Bob Dylan that contains the language "You Don't Have to Be a Weatherman to Know Which Way the Wind Blows." Klonsky's group is therefore known as the Weatherman faction, or Revolutionary Youth Movement I, while the ousted PLP members of Students for a Democratic Society is now referred to generally among young revolutionary circles as Revolutionary Youth Movement II, or RYM I and II to distinguish the two organizations. The confusion is made more complicated by reason of the fact that each group persists in using the title Students for a Democratic Society, although the Klonsky group is more frequently being referred to as the Weatherman faction, while the PLP dissidents that were expelled are referred to simply as RYM II. We shall use these designations henceforth for the sake of whatever simplicity we may be able to achieve. There is, of course, a goal common to all of these subversive groups, Communists, Trotskyists, Maoists, Black Panthers, Weatherman, PLP, RYM II and all the rest—and that is to accomplish the overthrow of the government of the United States. This central objective never changes, which is the reason that no matter how antagonistic idealogically these groups may be toward one another, they will when the occasion justifies it, join together in a united front action against the common foe, to-wit: "The Establishment." There is not the slightest doubt that SDS, split or not, still comprises the most grave and imminent peril to the security of the country, together with the Black Panther Party and scattered groups of fanatic revolutionaries.

SDS Force and Violence

In his statement before the House Subcommittee on Appropriations, April 17, 1969, J. Edgar Hoover, Director of the Federal Bureau of Investigation, described some of the activities of the Students for a Democratic Society. He said:

> "The militant mood of the 1968 National Convention of the Students for a Democratic Society was obvious from the subjects discussed and the suggestions made at its various workshops. For example, at a workshop dealing with sabotage and explosives, the participants discussed such things as disrupting Selective Service and police facilities during riots; mailing letters dipped in combustible materials; flushing 'bird bombs' in toilets to destroy plumbing; using sharp, tripod-shaped instruments to halt vehicles; jamming radio equipment; firing Molotov cocktails from a shotgun; using electronic firing devices, and inserting 'thermit bombs' in manholes to destroy communications.
>
> The same militant mood was evident in suggestions made for a proposed pamphlet by participants in a workshop on self-defense and internal security. Suggested articles included starting rifle and karate clubs; infiltrating right-wing organizations; starting rogues galleries of police officers, and spotting plainclothesmen by observing them as they testify in court.
>
> The 1968 SDS Convention also adopted a resolution on the military. This resolution created a project for 'G.I. Organizers' and established a coordinating office for the project in New York. The project will support individuals who wish to continue the 'struggle against imperialism' by entering the military service in order to 'politicize' and organize those in military service to resist authority. The project has established 'G.I. Drop-In Centers' near military facilities in order to offer a political program to aid servicemen in their organizing efforts within the military.
>
> In addition, the resolution encourages local SDS chapters to organize a campaign to involve service-

men in social and political activities; establish a military counseling service; provide support for deserters, and give support to demonstrations and publicity to radicals within the military service."

Among the acts of violence listed by Mr. Hoover and attributed to SDS were the following: In September 1968 within a five-day period, three ROTC establishments were sabotaged and a fourth threatened in diverse points across the nation. On September 13, 1968, Callahan Hall, the Naval ROTC building at the University of California at Berkeley, was damaged by explosives which caused an excess of $25,000.00 in damage. Two previous attempts were made to firebomb this building in 1968. On September 15, 1968 several firebombs were thrown into the ROTC Armory at the University of Delaware damaging or destroying 300 military uniforms and public address system equipment. On September 18, 1968, a fire of undetermined origin caused extensive damage in Clark Hall, the Naval ROTC building at the University of Washington in Seattle. Prior to this date, members of the SDS at this University had announced the Naval ROTC unit as one of their targets. Furthermore, at the scene of the fire, Robbie Sterns, self-described SDS activist, was observed chanting, "this is number one and the fun has just begun; burn it down, burn it down."

In Storrs, Connecticut, a source reported that SDS was planning to blow up the ROTC building on September 17, 1968 at the University of Connecticut, but the bombing attempt did not take place. On September 29, 1968, the local CIA office at Ann Arbor, Michigan was bombed. Ann Arbor is the home of the University of Michigan where there have been numerous New Left activities the past several years. The New Left at the University and specifically SDS has claimed credit for the bombing of this CIA office. On February 20, 1969, Michael Siskind, a student at Washington University, St. Louis, Missouri, an SDS member, on a plea of guilty in Federal Court in St. Louis, was sentenced to five years imprisonment in connection with charges stemming from the attempted firebombing of the ROTC headquarters on that campus, December 3, 1968. Between January 20 and January 28, 1969, high-power transmission towers were

dynamited in and around Denver, Colorado. On February 14, 1969, Cameron David Bishop, an SDS activist, was indicted by a Federal Grand Jury in connection with these incidents and is currently being sought as a fugitive.

Mr. Hoover added that it was coincidental that in June 1968 at the SDS National Convention one of the workshops dealt with sabotage and explosives. Many of those who attended the SDS National Convention returned to school in September 1968, and as noted previously, acts of violence occurred early in that school year. The SDS continues to make available information regarding the use of explosives. For example, at a National Council meeting of the SDS held in Boulder, Colorado from October 11, 1968, to October 13, 1968, copies of a pamphlet captioned "Sabotage" and setting forth instructions on how to make firebombs and incendiary devices were left on the stage of the auditorium where the meeting was held. (Hoover testimony, op. cit., pages 53, 56, 57.)

In March 1970 a New York town house was destroyed by explosions and fire and a subsequent investigation disclosed the body of a young man, identified as Theodore Gold, 23, a student at Columbia University and a member of the militant Weatherman faction of SDS. He had been crushed by debris and died of asphyxiation. Catherine Wilkerson was injured and taken alive from the premises, and was also found to be a member of SDS. On November 16, 1967, she and three others—all SDS officers—left for Hanoi in a group recruited by New York antiwar activist David Dellinger. A police investigation led to the conclusion that experiments with high explosives had gotten out of control and caused the blast.

In October 1969, violent riots occurred in Chicago, as a result of which indictments were handed down by a Federal Grand Jury in Chicago against Mark Rudd, 22, head of the Weatherman faction of SDS; Bernardine Dohrn, 27, Weatherman organizational secretary; Kathy Boudin, 26, William Ayres, 25, Jeffrey Jones, 22, Terry Robbins, 22, John Jacobs, 22, Linda Evans, 22, Howard Machtinger, 23, Michael Speegle, 23, Judy Clark, 21 and Lawrence Weiss, age unknown. All were said to be members of the Weatherman faction of SDS, and all were

charged with conspiring to violate the Federal Anti-Riot Act in connection with the four-day disturbance last October. (See *Los Angeles Times,* March 10, 1970; April 3, 1970.)

With all of the available knowledge about the true character and activities of SDS and its two factions, it seems utterly incomprehensible to us that university administrators and the heads of high schools, junior colleges and State colleges should continue to afford official recognition and campus status to this organization, provide State owned facilities at taxpayers expense, while SDS goes about its business of revolution and its activities in disrupting the campus, blowing up its buildings, terrorizing students who presume to disagree with its principles and propaganda and arrogantly defying all authority.

STUDENTS FOR A DEMOCRATIC SOCIETY
EXHIBIT I

sds National Office

April 5, 1969.

Comrades:

Enclosed is the re-written pamphlet on U.S. history by Noel Ignatin. Since the NIC approved it, with several recommendations, we are planning to go ahead and lay out the pamphlet this week, pending your final approval. So please call in immediately.

We're pushing to produce literature on high schools and Vietnam immediately, so any suggestions or recommendations should be called in right away. We have also thought of redoing the "educational packets" prepared for the N.C. on racism, to be more for general distribution.

Ideas and samples for posters too.

What do you think of the new letterhead?

DARE!

Bernardine

Bernardine Dohrn

SDS, 1608 West Madison, Chicago, Illinois 60612
phone (312) 666-3874

STUDENTS FOR A DEMOCRATIC SOCIETY
EXHIBIT II

AN INTRODUCTION

SDS

STUDENTS FOR A DEMOCRATIC SOCIETY
EXHIBIT III

L.A. REGIONAL 510½ HOOVER
STUDENTS FOR DEMOCRATIC SOCIETY
667 2345

To the movement community:

You may already know that SDS is planning a 10-day program, April 20-30, which will be coordinated with national and international anti-war activities. At this very moment, Susan Eanet, one of our Los Angeles regional organizers, is in West Berlin at a conference planning the international strategy for the Ten Days program. Locally, the prgram is designed so that specific actions will come out of ongoing campus and community projects. For instance, a mass rally in central L.A. on April 27 will deal with the serious repression against the black movement and against anti-draft activists.

The theme of the program is to be an attack against American imperialism on all fronts. American economic and military domination of Southeast Asia, Latin America and Africa, domestic imperialism in the black ghettoes as well as against Mexican-Americans and other minority groups, and the issue of the draft will all be focuses for rallies, teach-ins, guerilla theater actions and demonstrations. Educational actions are being planned both on the campus and in the community, with the main emphasis on reaching new people and building new bases for the rapidly growing anti-war movement.

You may ask how you can involve yourself in this project. First, you active participation in such actions as the April 27 march or in the teach-ins and rallies on the Third World can help build the large movement so desperately needed to end the war. Also, your contributions can support full-time orgainizers actively involved in work at colleges, high schools and in working-class communities. We hope you will be able to do as much as possible to make this vital program a success.

Yours truly,

Michael Klonsky Paul Shimoff

National field secretaries,
Students for a Democratic
Society

****

PLEASE CLIP AND RETURN

I wish to actively participate in the Ten Days Program_____.
I would like to contribute $_____ for the Ten Days Program.

NAME_____TELEPHONE_____

ADDRESS_____CITY_____ZIP_____

SOCIALIST WORKERS' PARTY

The Socialist Workers' Party is an international Communist organization that was founded in 1938 by Leon Trotsky, whose real name was Lev Davidovich Bronstein. With Lenin he was a leader of the Russian Revolution, long before Stalin rose from his relatively obscure position as an organizer of riots.

After Lenin's death in 1924, Stalin, who by then was General Secretary of the Russian Communist Party, used his position to undermine and isolate Trotsky, driving him from Russia to a Turkish exile in February, 1929. (*Stalin: A Critical Survey of Bolshevism.* By Boris Souvarine. Alliance Book Corp., N.Y. 1939, page 492.) There he was so hounded by Stalin's agents that he was forced to France where he remained until 1936. During his stay, he laid the foundation for a world wide movement, and it may be accurately described as having its formal beginning at a constituent assembly of 21 followers at Paris in 1938. (Souverin, op. cit.; *The Mind of An Assassin* by Isaac Don Levine. Farrar, Straus and Cudahy, N. Y. Co., 1959; 1957 *California Report,* page 84 et seq.)

The organization was, and frequently still is, referred to as the Fourth International to distinguish it from the Communist Third International directed from Moscow. Since the new movement was created in France, and since it was highly organized by Trotsky's son, who remained there until he was assassinated, it is natural that France should become the principal base of operations. This will explain the visits of French representatives to SWP meetings in the United States, and frequent references to the French Trotskyists in SWP publications that we shall soon describe.

Socialist Workers Party in America

The CPUSA was created when, in 1919, the radical members of the American Socialists Party left after a stormy Chicago convention to form a separate group that

would affiliate with the Russian Comintern. These turbulent gatherings are, as we have seen, characteristic of subversive movements. Undermining, disruption, revolutionary zeal and an obssessive urge toward power are common traits of the members, and undoubtedly contribute to these violent sectarian clashes. A recent example is the ouster of militants from the CPUSA, who thereafter pledged allegiance to Peking and formed the Progressive Labor Party. An even more recent illustration was the split in Students for a Democratic Society, and its division into the Weatherman and RYM II sects.

The Socialist Workers' Party, or Trotskyist Communists, was formed in the same manner. When Leon Trotsky was attacked by Stalin, those in the American Communist Party who defended him were ousted, and sought refuge in the Socialist Party. Then came the inevitable battle for control, and at a Chicago convention in March 1937, the result was the ouster of the Trotskyists. James P. Cannon, leader of the SWP, has described the event as follows:

> "We called a meeting of the National Committee of our faction for June in New York, worked up the resolutions for our fight and organized it on a national scale. They retaliated by wholesale expulsions, beginning in New York. I never saw more bureaucratic and brutal violations of democratic rights and Party constitution than these pious Social Democrats resorted to when they found they couldn't beat us in fair debate. They just framed us up and threw us out." (*The History of American Trotskyism, Report of a Participant.* By James P. Cannon, Pioneer Publishers, New York 1944, pages 250–251.)

After this expulsion the Socialist Workers' Party was founded on January 1, 1938, and has continued to function as one of the most militant of the Communist organizations in the United States, and is, as we shall show, more militant now than at any time in its history.

At the time the Socialist Workers' Party was born, Trotsky was at Coyoacan, near Mexico City, where he had been granted asylum by the Mexican Government. But the hatred between Stalin and Trotsky was irreconcilable. Trotsky alive was a constant threat to Stalin's power,

and as Trotskyist groups were established in one country after another, the danger of counter-revolution loomed, as there were many Trotsky sympathizers in the Soviet Union, terrorized and silent because of the bloody reprisals that reached their climax in the purge trials and subsequent executions that had swept the Soviet Union prior to Trotsky's exile. From his sanctuary at Coyoacan, the old Bolshevik continued his criticism of the Stalin regime, wrote his tracts and directed his far-flung organization.

On August 20, 1940, Trotsky was assassinated by Ramon Mercader, an agent in the Communist Secret Police. (Levine, op. cit.) Several American Communists previously mentioned in our reports, participated in the scheme to engineer and finance Mercader's escape from prison in Mexico, but the attempt was abandoned when the prisoner made it clear that he felt much safer in his cell. We have given this background not alone because it is essential to an adequate understanding of the SWP, but also because it provides a grim example of the underground Communist intrigues that are so far removed from the knowledge of the average Americans that unless amply supported by incontrovertible evidence appear incredible and are discredited. Of course, the Communist propaganda machine plays a powerful role in this regard.

Organization and Publications

The very title of this Trotskyist Communist group, Socialist Workers' Party, is deceptive. On radio and TV programs the spokesmen for and members of this extremely revolutionary movement are usually referred to as Socialists, when in truth they regard the CPUSA as being too mild, and elect to follow the guerrilla warfare ideology of the Red Chinese far more closely than the mandates of the Moscow-directed movement. They operate under strict discipline, maintain their global contacts, support Castro, and implement the Trotsky-Maoist theory of permanent revolution.

The adult SWP maintains its headquarters at 873 Broadway, New York 10003. The youth division, known as the Young Socialist Alliance, has its national office at the same address. In California SWP offices are situated at 1702 East Fourth Street, Los Angeles, 2338 Market

Street, San Francisco, and 2519-A Telegraph Avenue, Berkeley.

The Militant is the SWP's official paper. It is generally regarded in counter-subversive circles as more readable, better edited and published in a far more impressive format than the CPUSA's *Worker* and *Peoples World.* It is issued weekly, usually comprises 12 large pages, and sells for 15 cents a copy or $4.00 for a yearly subscription.

The Young Socialist Alliance publication is, or was, *The Young Socialist.* It is issued monthly except during the summer and sells for 25 cents a copy, 15 cents at newsstands, or $2.00 per year. In December 1969, it was decided to cease its publication because the magazine-type, profusely-illustrated organ was proving too expensive. But as this report is being written, it is yet too early to state definitely whether the four-page paper, *Young Socialist Organizer*, will permanently replace it.

In addition to *The Militant, Young Socialist* and *Young Socialist Organizer*, the SWP has issued the usual barrage of tracts, leaflets and booklets, some of which are reproduced herein as exhibits. Additional coverage is gained by running SWP candidates for public office, with publicity over the communications media that would not otherwise be available.

Militant Labor Forums

The Socialist Workers' Party has conducted these forums in California for many years, usually at SWP headquarters, but occasionally in public facilities when the occasion demands a large audience. We shall make no effort to summarize more than a few, selected because they will serve to corroborate some of the statements we have heretofore made.

Ralph Schoenman was the featured speaker at the Forum held at 1702 East Fourth Street, Los Angeles, on January 19, 1968. He was formerly secretary to Bertrand Russell, and during his remarks described the revolutionary situation in Bolivia where he had recently visited. He told the audience of almost a hundred people that he had been ousted by that country for radical activity, and

repeatedly declared that an armed revolution was necessary in the United States, and that a Black uprising should be the prelude to a general violent White revolt. He sharply criticized Moscow-oriented Communist parties and suggested a reprisal list of public officials in the United States for retaliatory liquidation. Among his listeners on this occasion were Oscar Coover, Sharon Handin, Mike McCabe, Arley Dann, Arthur Hopkins and Ron Ridenour. The attendance of these people at SWP functions with great regularity has often been noted.

On March 1, 1968, Mike McCabe, who also served on the Student Mobilization Committee, in addition to his duties as a SWP officer, spoke to a group of forty on the subject of "International Youth Radicalization." The other leading activists in the Southern California Socialist Workers'Party who usually attend these Militant Labor Forums are Joel Britton, William Hathaway, Theodore Edwards, Oscar Coover, Pete Seidman, David Frankel, Max and Shevy Geldman, and Victor Dinnerstein.

Mike McCabe addressed thirty-eight persons at the Forum held on March 1, 1968. On January 31, 1969, the featured speaker was Shermont Banks, then an officer in the Black Panther Party for the Los Angeles area.

C.P.-S.W.P. Rivalry

The Trotskyists (SWP) have run their own candidates for public office, as was seen in our discussion of the Peace and Freedom Party. During the last National campaign, Fred Halstead and Paul Boutelle of New York were the candidates for President and Vice-President of the United States. They were endorsed by the following California supporters who were affiliated with the Young Socialist Alliance: Vic Dinnerstein, California State College at Los Angeles; Ernie Erlbeck, Lanea College; Susan Montauk, Merritt College; Linda Richardson, Oakland High School; Dan R. Petter, Santa Barbara; Irvin H. Sutley, Jr., Sonoma State College; Anita Hansen, San Jose; John Maynes, San Francisco Polytechnic High School; Jim Miller, San Francisco City College; Kathie Harer, San Francisco State College;

Arnie Egel, University of California at Berkeley; John Montgomery, Yuba College and John Gray, Los Angeles. (SWP campaign leaflet, "Endorse the Halstead-Boutelle Ticket.")

The Militant, Friday, February 7, 1969, page 16, carried an article that further demonstrated the political rivalry and independence that exists between CPUSA and the SWP in running separate slates of candidates for public office. The article, entitled "Socialist Slate To Run In Berkeley Elections," by Lauren Charous, not only describes the Berkeley campaign but also gives an authentic background of some of the candidates: "The Socialist Workers' Party announced the candidacy of Peter Camejo, Antonio Camejo and Pat Wolf for the Berkeley City Council and Froben Lozada for a seat on the Berkeley School Board."

Some of the campaign issues, dedicated to the creation of strikes and travels to Cuba by SWP members, is described in the balance of the article as follows:

> "The campaign will help build mass support for the current strike led by the Third World Liberation Front and American Federation of Teachers, on the San Francisco State College campus and at the University of California at Berkeley. It will also aid in mobilizing support for the G. I.-Civilian Anti-war March planned for April 6.
>
> Froben Lozada, who the *Berkeley Gazette* calls a 'firebrand' in the TWLF movement throughout the Bay area, is a Chicano educator and activist. After obtaining his M. S. in Spanish, he spent several years teaching at Highlands University and the all-White University of Southern Mississippi. He was fired because of his civil rights organizing amongst students at Southern Miss.
>
> He moved North and taught at the University of Wisconsin at Oshkosh, and in 1967 went to South Texas where he was employed in the public schools. Again, his anti-war and civil rights activity in the Chicano community led to harassment and loss of job. With the help of the American Civil Liberties

Union he was able to win his job back. Most recently he has been teaching at Napa College, in addition to his active role in the TWLF movement in the Bay area.

Peter Camejo, a SWP candidate for Mayor of Berkeley in 1967, is a former National Secretary of the Young Socialist Alliance and a member of the National Committee of the SWP.

Peter Camejo, who is currently in Cuba, sent a message of solidarity to be read at the press conference on behalf of the Cuban people to the Black and Third World Liberation Fighters in the U.S.

Pat Wolf, 24, is a member of the Young Socialist Alliance. He has been active in the anti-war movement since its start, helping to found the Vietnam Day Committee at the University of California. He was a volunteer worker for the Delano Grape Strike and is an active member of the American Federation of State, Count, and Municipal Employees, Local 1695.

Antonio Camejo, 27, is a long-time member of the YSA. He was active in the Fair Play for Cuba Committee, has toured Latin America interviewing revolutionary leaders for *The Militant* and other radical publications, and in 1964 he helped produce and direct a documentary film on the guerrillas struggle in Venezuela, 'FALN'.

He is a member of the Executive Council of the Berkeley AFT (American Federation of Teachers) Local 1078 and has been active in building the TWLF strike on the Berkeley campus."

There is a widespread tendency to scoff at the part ideology plays in these Marxist groups, just as there is a tendency to denigrate such subversive battle devices as the united front and the diamond infiltration pattern. But the bloody feud between Stalin and Trotsky sowed seeds of hostility between the Moscow-line Communists and Trotskyist Communists the world over, the results of which are still evident and, as we shall see, rapidly becoming more bitter. And because France is still symbolic of the Trotskyist base, we find such representatives from

that country as Yves Sallese, a leader of the French *Jeunesse Communiste Revolutionaire*, who visited the United States for the purpose of attending the Young Socialist Alliance convention in Chicago, November 28–December 1, 1968, and then came to California a few days later. During a KGO radio interview in San Francisco, he announced that he was an "observer" at the violent student rebellion at San Francisco State College. Sallese is a French high school teacher and one of the officials of the *Jeunesse Communiste Revolutionare*, which was described in *Young Socialists* for December, 1968–January, 1969, page 8, as "The French Counterpart of the Young Socialist Alliance."

In connection with his Berkeley campaign, Peter Camejo wrote a booklet entitled "PFP (Peace and Freedom Party) for SWP (Socialist Workers' Party) in 1968—A Critical History of New Politics in Berkeley." In it he stated that "The Communist Party is faced with a serious problem. After working for three decades in the Democratic Party, it is difficult for them to shift over to support a 'lesser evil,' Republican, should the Democrats renominate Johnson," and he added that the Communist Party "looks yearningly to a 'third ticket' coming out of the Peace Movement."

The final word concerning the CPUSA attitude toward the Trotskyists in the United States, and for the rest of the world, for that matter, came with the appearance of an article in the March 1970 issue of *Poltical Affairs*, page 38. Here was a clear and unmistakeable directive from Moscow, written by A. Basmanov, which established the Party line as follows:

> "The activities of the Trotskyites in the capitalist countries never seems to flag. Their efforts to influence the youth of France and Japan, their constant intrigues in the Latin American countries, are doing serious damage to the revolutionary struggle. In addition, they proliferate fabricated propaganda materials, which the bourgeois press then quickly accepts and publicizes."

In further describing the activities and ideological nature of the SWP, Basmanov continued:

> "Trotskyism does possess a certain tenacity because its ultra-Left views accord with the sentiments of sections of petty-bourgeois intellectuals of declassed elements, and various adventurers. Trotskyism does adapt itself to such sentiments. Besides, the experience of class struggles shows that Leftism often comes as a reaction to the 'original sin' of Right-wing Social Democracy, rejecting revolutionary forms of class struggle. The leaders of Trotskyism themselves do not conceal the fact they hope to find their support among the extremist petty-bourgeois elements. And the latter, who as a rule are ready to denounce capitalism in words, are at the same time inclined to reduce all forms and methods of struggle against capitalism to adventurism alone.
>
> "Here and there the Trotskyites operate in the same environment as the groupings of Mao Tse-tung's supporters. During the last years' student actions in France, for instance, the Trotskyites and the Maoists actively helped each other, inciting the youth with equal zeal to rashness and violence. The Trotskyites' alliance with the pro-Maoist organizations is also to be observed in some of the Latin-American countries."
>
> "... Trotskyites try their best to penetrate first of all into youth organizations, and to do this by playing on the political immaturity of some of the youth, who in addition, have only a very vague notion of Trotskyism and its true aims. They adapt themselves to the moods of youth and flatter it, calling it the most 'radical wing of the movement.' As was pointed out in the theoretical organ of the Communist Party of Great Britain, *Marxism Today,* the Trotskyites constantly root about among teenagers, assuring them that 'the revolution is around the corner' and only they, the Trotskyites, have the true 'revolutionary program.' ... they continue to do everything in their power to undermine the Communist movement and to befuddle at least part of the petty-bourgeois sections of the populations and student movement.

That is why the true representatives of the interests of the broad anti-Imperialist movement, the Communist and Workers Parties, carry on an acute, irreconcilable struggle against Trotskyism. *That is why they continually expose the Trotskyites as enemies of the working-class movement, showing their anti-revolutionary nature and unmasking their methods of fostering subversive activity.*" (Our emphasis.)

After this denunciation from the highest authority, we doubt very much if there is any further collaboration between these two militant branches of the world communist movement, the CPUSA and the SWP. What the article failed to state, however, is that the activities of SWP in penetrating youth movements and fomenting violent demonstrations and revolutionary activity is equally characteristic of the CPUSA.

SOCIALIST WORKERS PARTY
EXHIBIT I

Socialist Workers Party
Exhibit I

MILITANT LABOR FORUM

SPECIAL SPECIAL SPECIAL

FRIDAY, JANUARY 19, 1968

RALPH SCHOENMAN

BERTRAND RUSSELL'S PRIVATE SECRETARY
DIRECTOR, RUSSELL PEACE FOUNDATION

SECRETARY-GENERAL, INTERNATIONAL WAR CRIMES TRIBUNAL

Will speak on:

REVOLUTION AND COUNTER-REVOLUTION IN BOLIVIA & VIETNAM

MR. SCHOENMAN
Was in Bolivia from July through Nov., 1967, as part of the Commission of Enquiry sponsored by the Russell Foundation to help defend Regis Debray, the French journalist who was with Che Guevara in Bolivia

Interviewed Debray in prison and attempted to speak at Debray's trial - was arrested and deported to United States in November.

Is presently preparing work on a commission on crimes against the American people

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SOCIALIST WORKERS PARTY
EXHIBIT II

THE BERKELEY UPHEAVAL
A SOCIALIST VIEW

PETE CAMEJO

SUSPENDED BERKELEY STUDENT
ELECTED TO UC STUDENT SENATE
FORMER NATIONAL SECRETARY, YSA

SUNDAY, DEC. 17
7:30

1702 E. Fourth St., Los Angeles Donation $1.00

sponsor: Young Socialist Alliance

SOCIALIST WORKERS PARTY
EXHIBIT III

young socialist

December 1968—January 1969 25¢

High Schools Explode

RACIAL MINORITY GROUPS

Negro Americans

In 1956 we held an open hearing in Los Angeles to examine Communist efforts to infiltrate and control Negro organizations, particularly the National Association for the Advancement of Colored People (NAACP). During the hearing much documentary evidence was received and we were fortunate in having the testimony of two experts. They were William Byron Rumford, then a California State Assemblyman from Alameda County, and Franklin H. Williams, an attorney from Palo Alto, who served as administrative officer for the NAACP, with jurisdiction over the then Territories of Alaska and Hawaii and the States of Oregon, Washington, Arizona, Utah, Idaho, Nevada and California. Mr. Rumford, a highly respected legislator, had been an NAACP officer for many years.

These witnesses had observed the Communist infiltration efforts closely. They provided abundant evidence that the attempt had failed. The NAACP is by far the largest Negro organization in the United States and represents the sentiments of the vast majority of our Negro citizens who, despite abuses, discrimination and frustrations, have steadfastly opposed the use of violence as a means to rectify their condition.

Said Mr. Williams:

> "It was at the Sixth World Congress of the Communist International in Moscow that the Party affected an interest in the Negro, which was to manifest itself in a prosegregation resolution in the year 1930. That resolution reads in part:
>
> 'The main Communist slogan must be: the right of self-determination of the Negroes in the Black Belt. Complete right of self-determination includes also the right to government separation . . . the right of the Negroes to governmental separation will be unconditionally realized by the Communist Party . . . the Communist Party must stand up with all

strength and courage for the struggle to win independence and for the establishment of a Negro Republic in the Black Belt.'

Thereafter, the entire Party apparatus began to grind out tons of propaganda on 'Negro self-determination.' Responsible Negro leadership within the NAACP and those heading up respected church, labor and fraternal organizations saw easily through this not even thinly-veiled alien replica of our home grown racial segregation. They rejected this proposition with the same vigor as they were fighting indigenous Jim Crow.

Undaunted by the Negroes' rejection of Communism and his faith in American democracy, the Party stepped up its efforts to recruit our largest minority, capitalizing fully upon the tragic depression years and the generally deplorable condition of civil rights.

Seeking to alienate Negroes from their leaders, particularly those who would not be seduced by the 'United Front,' NAACP officials, churchmen and labor leaders were denounced as 'bourgeois reformists,' 'tools of the capitalists,' and 'allies of the lynching forces.' "

Mr. Williams then proceeded to discuss the problems his organization had experienced in California, referring to cases where, with callous hypocrisy, the Communist apparatus milked every major case where the Negro had become embroiled with the law in some serious offense, draining the incident of every vestige of its propaganda value and then completely ignoring the individual involved.

Within the past two years this propaganda and agitation drive has been increased enormously, using the Peace Movement, the war in Vietnam, civil rights, courses in Black studies at our educational institutions, and a long series of non-negotiable demands, for the purpose of arousing the most susceptible elements of the Negro minority to violent action against the government.

There can be no doubt that this accelerated campaign has succeeded in some degree, but it has utterly failed to reach the Negro minority as a whole, and while space does not permit us to discuss this problem in depth, we will devote the main portion of this section of our report

to the most militant of the Negro organizations, the Black Panther Party, and some of the smaller but equally dangerous groups.

The Black Panther Party

Originally known as the Black Panther Party for Self-Defense, this organization was formed in Oakland in October 1966, and thereafter branches were established in large urban centers throughout the United States. Its members carried rifles on city streets, usually dressed in black berets and leather jackets, and soon moved from defense to attack. On May 2, 1967, a group of Panthers startled the members of the California Assembly by shoving their way past guards and invading the chamber while the Assembly was in session. The invaders carried a variety of weapons, and said they had staged their dramatic trespass to register their protest against pending legislation to restrict possession of firearms. Twenty-six of them were arrested and booked on a variety of charges.

Eldridge Cleaver, Huey P. Newton and Bobby Seale were the prime movers of this organization. Its objectives were mainly to keep track of police activities and protect the Negro population from law enforcement agencies. Soon they were stockpiling supplies of weapons and ammunition, patrolling streets and acting as an armed, guerrilla force.

After the invasion of the State Assembly, the incidents between police and Panthers rapidly grew to grim proportions. At the same time the Panthers, few of whom are employed, were able to send their representatives to Cuba and other foreign countries for indoctrination and training, to publish a newspaper and other propaganda materials, and to amass formidable supplies of arms, ammunition and explosives.

The United States was divided into seven Panther regions, with numerous national and local divisions and officers. Discipline is rigid, but members are provided with living expenses, legal services, and medical care without cost. Since no Panther will disclose the membership strength of the national organization or the local unit to which he belongs, we can only estimate the total population of the organization. A safe guess would put

it at approximately 25,000. Clearly, a great amount of money is needed annually to finance these purchases, activities, travelling expenses and services. There is substantial evidence concerning the various sources from which these funds are procured, but since several of them are currently under intensive investigation, it is not appropriate that we should discuss them here. One of the sources is obviously the front organization known as Friends of the Panthers, and which we shall soon examine.

As the Panthers became more boldly militant and violated the law with growing contempt, police raids and arrests increased proportionately and thus the battles between law enforcement agencies became more frequent. The news media have reported these confrontations and killings of participants on both sides in lurid detail and there is no use of our repeating them here. By mid-1968 the Panthers were financially troubled, their leaders had been slain, convicted or fled the country, and the decimated organization was beginning to flounder. At that time there was no organization such as Friends of the Panthers through which legal aid and financial assistance was forthcoming, but there was a growing indication that the CPUSA was becoming interested in the organization, particularly when the Peace and Freedom Party had one of its Northern California meetings endorsed the Panther program.

Peace and Freedom Party Candidate

The Peace and Freedom Party announced that it would run Eldridge Cleaver as its candidate for President of the United States. Despite several attorneys who held offices in the Peace and Freedom Party, no one had bothered to find out whether or not Cleaver was eligible for the position. The California Secretary of State checked with us, and learned that Cleaver was two years shy of being thirty-five, the age required by Article II of the United States Constitution as a prerequisite for becoming President of the United States.

After the arrest of Huey Newton and Cleaver and the latter's flight from this country, legal aid and financial assistance was quickly materialized through the Newton-Cleaver defense committee. Many of its sponsors have

records of pro-Communist activity, and it was interesting to note that whereas the Panthers were originally oriented toward the Maoist-Communist line, thereafter the organization moved steadily toward the CPUSA. Panthers had faithfully carried the little red plastic-covered books of Mao's thoughts and attended classes to learn about Red Chinese Communism and guerrilla warfare. But with aid channelled to the Panthers through the Newton-Cleaver defense committee, the little book of Maoism vanished and the first evidence of Panther hostility toward the Maoist Progressive Labor Party and Socialist Workers' Party became evident.

From Peking to Moscow

The Panther's swing from Peking to Moscow was also seen in the new white advisers and associates that came to the aid of the organization. As the CPUSA publications pointedly geared their propaganda in support of the Panthers, a new attorney undertook to defend them in the courts. He was Charles R. Garry, a San Francisco lawyer who was admitted to the state bar in 1938. He was identified as a Communist Party member by the testimony of Dr. Jack Patten, who appeared before the House Committee on June 19, 1957, and stated that he and Garry were members of the highly secret professional section of the Communist Party in San Francisco. When subpoenaed and questioned about his affiliation, Mr. Garry invoked the protection of the Fifth Amendment. When not under oath, he has since denied that he was ever a member of the Party. Garry was a candidate for election to the Congress of the United States on the Independent Progressive Party ticket in 1948. The IPP was a forerunner of the Peace and Freedom Party, and solidly controlled by the Communist apparatus in California. Garry was also connected with the Communist school in San Francisco and the International Workers' Order, a potent Communist Front. His partner, Benjamin Dreyfus, has also been identified as a Communist.

Friends of the Panthers

The Friends of the Panthers in Southern California was created from the older Newton-Cleaver defense com-

mittee in 1969. At that time the Panthers still clung to their Maoist orientation, evidenced by their continued collaboration with the Progressive Labor Party and the Socialist Workers' Party. After the Friends of the Panthers began to provide counsel and cash, however, this collaboration ceased and was replaced by a marked animosity between the Panthers and the pro-Maoist groups. Even as late as April 13, 1969, Bobby Seale addressed a Friends of the Panthers meeting at 400 West Washington Boulevard, Los Angeles and announced that a Chinese Maoist organization in San Francisco known as the Red Guards had endorsed the Panther program. At this same gathering Donald Freed announced that the CPUSA, Southern District of California, had contributed $100.00 to the Friends of the Panthers.

This was the first important meeting of the new adjunct organization, attended by 550 persons. Donald Freed was master of ceremonies, and, as will be shown, at subsequent meetings of the Friends of the Panthers, he was always a passionate advocate of violent revolution and the use of explosives and guerrilla warfare. Freed, who had taught at San Fernando State College and UCLA, described the Panthers as The Black Shock Troops of the Revolution—the Black revolt by guerrilla tactics on their part would soften up the country for the mass revolt that would come later.

In October 1969, Freed and Mrs. Shirley Sutherland were indicted by a Federal Grand Jury in Los Angeles for conspiracy to purchase grenades, alleged to have been intended for use by the Panthers. Mrs. Sutherland resided at 1144 Tower Road in Beverly Hills. In July 1969, when officers went to this address to make arrests, Mrs. Sutherland was away. But they did find Odis N. Grimes and Arthur D. League, both wanted by the FBI, the former for harboring a fugitive and the latter for the murder of a Santa Ana police officer. Freed and Mrs. Sutherland were subsequently released on a technicality. Freed's play, "The US v. Julius and Ethel Rosenberg," has been appearing in Cleveland, and is scheduled to open in New York. It is an account of the prosecution of Julius and Ethel Rosenberg, executed as Soviet espionage agents after having been convicted of supplying classified information to a foreign power.

Friends of the Panthers Meetings

On May 17, 1969, a meeting of the Friends of the Panthers was held at the First Unitarian Church in Los Angeles, 2936 West Eighth Street, at 8:40 a.m. There was a heavy attendance of about 120 people, among whom were included Raymond Masai Hewett, then chairman of the Los Angeles Black Panther Party; Donald Freed, then chairman of the Friends of the Panthers; Bernard Hirsch, chairman of the Friends of the Panthers Political Education Committee; Charles Brittin, chairman of Public Relations, Barbara Brittin, his wife; Rose Chernin, heretofore mentioned as executive director of the Los Angeles Committee for Defense of the Bill of Rights; Fred Wheeler and others who contributed financially for the assistance of the FOTP, and who were to participate in its future activities.

Raymond Hewitt spoke for approximately 30 minutes during which he attacked Ron Karenga and his militant Negro following, and Donald Freed spoke during the afternoon session and predicted an armed revolution. A schedule of political education classes was announced; Mondays at 4072 Glenalyn Street, Los Angeles; Tuesdays at 722 Adelaide Place, Santa Monica; Wednesdays at 1169 South Mullen Avenue, Los Angeles, and at 5752 Tobias Avenue, Van Nuys; Thursdays at 2720 South Raymond Avenue, Los Angeles, and Fridays at 9017 Columbia Avenue, Sepulveda. A week or so later, the classes at the Glenalyn and Columbia Avenue addresses were cancelled.

On May 23, 1969, a meeting of the FOTP was held at 1235 East Portner Street, West Covina. Twenty-five people were present, and at the meeting Donald Freed described the effectiveness of guerrilla hit-and-run tactics, diversionary raids, and the advisability of studying texts on the use of explosive devices. Freed added that nonviolent people, as he described them, who might be squeamish about inflicting direct violence upon the persons of others, could serve in the disruption of power stations, transformers, water mains, telephone lines and similar facilities.

On May 24, 1969, an FOTP executive committee meeting was held at 1169 South Mullen Avenue, Los Angeles. The meeting started shortly after 2.00 p.m., and lasted

until approximately 5:30 p.m. There were about 36 persons present, among whom were Donald Freed, Elaine Brown, Edward Medard, Barbara Brittin, James Cookson and Bernard Hirsch. One of the highlights of this gathering was an interesting statement made by Barbara Brittin to the effect that the Culver City Police Department was offering courses on the use and care of firearms, and she urged all FOTP members to attend the classes in line with the security aspect of the organization. She asserted that these classes were given in the basement of the Culver City Police Station, that the pistol course involved 12 classes of three hours each, running from 7 to 10 in the evening, at a cost of $12.00 per student. She gave specific directions on the method of applying for the course and correct answers to the questions that might be asked. Edward Medard disclosed that he was also taking the course at the Culver City Police Department and agreed with Mrs. Brittin in advocating that other members of the organization enroll.

Upon receiving this information, we communicated with the Culver City Police Department, and received its complete cooperation. It corroborated the fact that Barbara Brittin, 31 years of age, 722 Adelaide Place, Los Angeles 90042, attended the class in April 1969. It also provided the information that Ed Medard, 27, 21 Thornton Avenue, Venice, attended the class in May 1969, and stated he had been persuaded to take it by Barbara Brittin. Information from the personnel of the Police Department disclosed that Medard endeavored to draw the instructor into volunteering statements concerning police practice with regard to shooting incidents. It was also revealed that after Mrs. Brittin and Medard had completed the course, the police department received a sudden increase in applications, many of whom were Negroes.

On June 28, 1969, the FOTP held another meeting at the First Unitarian Church in Los Angeles, commencing at 10 in the morning and ending at 4 in the afternoon. About 60 people were present, approximately 16 of whom were members of the Black Panther Party, the FOTP being almost wholly comprised with white members. This meeting was preliminary to the very important United Front Against Fascism gathering in Oakland, scheduled for July 18–21, 1969. Among those present

were Raymond "Masai" Hewett, Elaine Brown, Dorothy Healey, Nemmy Sparks, Robert Duggan, James Berland, Ron Warren, Ed Pearl, Milton Zaslow, Mike Yueff, Ron Ridenour, Bernard Hirsch, Donald Freed, Charles and Barbara Brittin. The presence of Dorothy Healey, Nemmy Sparks and Robert Duggan, heretofore mentioned as prominent Communist functionaries, lends added support to the evidence of Communist manipulation and control of the Black Panther organization, through one of its characteristic front organizations, Friends of the Panthers. At this function Mrs. Brittin handled the registration desk, while her husband was busy photographing people both inside and outside the meeting place.

Ron Warren introduced Donald Freed, who made his usual fiery speech predicting violent action after July 19, and then yielded the platform to Raymond Hewett who praised the Students for a Democratic Society for cleaning house and ousting the Maoist Progressive Labor Party element, and he upheld the distribution of the Panther coloring book with its savage pictures of the killing of law enforcement officers. We have reproduced some pages of this book as exhibits in connection with this section of the report. Hewett specifically attacked the Progressive Labor Party, and announced that Panther attorney Charles R. Garry would be a member of the United Front Against Facism, Steering Committee, that popular Communist device for maintaining control of an organization.

United Front Against Fascism, Oakland, July 18–21, 1969

By July 1969 the Panthers had almost completed their amazing switch of allegiance from Peking to Moscow. The little red books on Maoism had all but vanished; only rarely did the Panthers appear armed and uniformed in public. And now they even adopted Georgi Dimitrov's classic united front tactic, that tried and highly successful Communist strategy. In *The Black Panther* as far back as May 31, pages 12 and 13, was a reprint of Dimitrov's famous speech on this device, printed in connection with the Call for the United Front Against Fascism meeting at Oakland scheduled for July 18–21, 1969. Excerpts from the speech were also printed

and the official notices of the gathering called by the Black Panther Party. On the last page of the Call, a list of individual sponsors appeared. They were: David Hilliard, Stu Albert, Kathleen Cleaver, Bobby Seale, Tom Hayden, SDS; Dr. Philip Shapiro, Dr. Carlton Goodlett, Ray "Masai" Hewett, Charles R. Garry, Bill Kunstler, Roosevelt Hilliard, Emory Douglas, Bob Rush, SDS leaders, Black Panther Party, and the International Liberation School.

It will be noted that the Socialist Workers' Party (Trotskyists) and Progressive Labor Party (Maoists) were not included as sponsors, nor were they permitted to send delegates or take any active part in the conference. They did, however, have some "observers" at the sessions who were treated most inhospitably.

Each delegate was assigned a code number for identification and security purposes, an information headquarters was established at 3106 Shattuck Avenue, Berkeley, which is the national headquarters for the Black Panther Party.

Tom Hayden, founder of SDS, collaborated with Bobby Seale in putting this United Front meeting together. But as matters turned out, it was far from united. SDS had recently waged a political battle which split it asunder and ousted the Maoist PLP element. The old antagonism between the CPUSA and SWP Trotskyists was becoming more heated, and the rivalries between the many groups of the New Left soon became apparent as the conference proceeded.

On Thursday July 17, the delegates registered at St. Augustine's Episcopal Church in West Oakland, and the first meeting was held in Oakland Auditorium at 7:00 p.m. on Friday July 18, with about 2,500 delegates, observers and others in attendance. The official agenda scheduled a showing of a motion picture at Merritt College, 59th and Grove Streets, Oakland, and meetings at Oakland Auditorium and DeFremery Park, which the Panthers renamed the Bobby Hutton Memorial Park, Hutton having been killed in the same shooting confrontation with police at which Eldridge Cleaver was wounded in April 1968.

After everyone had been thoroughly searched for concealed weapons and tape recorders, Raymond "Masai"

Hewett opened the meeting on Friday and introduced Edward Keating, founder of *Ramparts Magazine.* Bobby Seale, Panther chairman, then spoke at length and with considerable restraint as contrasted with his customary emotional addresses, liberally sprinkled with vulgarities and quotations from Mao Tse-tung. Dr. Carlton Goodlett was the next speaker, and urged local control of law enforcement agencies. In previous reports we have referred to Dr. Goodlett's affiliation with a variety of Communist Fronts and activities, including the CPUSA school in San Francisco. Two years previously he went to the Island of Cyprus World Peace Conference with Herbert Aptheker, father of Bettina Aptheker and one of the top CPUSA theoreticians, who has often spoken on California campuses.

Aptheker was, perhaps, the most prestigious speaker at the entire affair, although William Kunstler was certainly the most dynamic. Aptheker is not a particularly stimulating speaker, tending to be academic and dry. His attack against the FBI and its director was applauded, but as he went on and on some sections of the audience became impatient and intolerant during some of his more pedantic passages and booed him loudly.

The first session concluded with a Womens' Panel. Participants included Roberta Alexander, former activist in the Communist DuBois Club at the Berkeley campus of the Universtiy of California, where she was arrested during the invasion of Sproul Hall in December 1964. At that time she resided at 2231 Grant Street, Berkeley and since has moved to Los Angeles. (1965 *California Report,* page 103.)

The afternoon session at the DeFremery Park was the scene of fist fights between Panther security personnel and PLP and Trotskyists who tried to circulate propaganda leaflets. One of the most essential requirements for the Dimitrov United Front is that it be united, and as the program continued this element began to wane. At the Park the controversy and ejection of dissidents diverted attention from the regular program where the theme was "Students and Education v Fascism" and the scheduled speakers were Nathan Hare and Roger Alvarado, controversial figures during the disturbances at San Francisco State College. The morning meeting at

the Auditorium was chiefly concerned with the panel on organized labor, headed by Roscoe Proctor, California member of the CPUSA National Committee. Other participants were Archie Brown, Veteran California Communist, Andy Chavez, from the United Farm Workers' Organizing Committee; Robert Avakian, member of the Weatherman faction of SDS and leader of the extremely militant Revolutionary Union in the Bay area; Noel Ignatian, SDS National Committee member, and Kenny Horston, Black Panther member.

In the Auditorium on Saturday evening, the topic was Political Prisoners and was well-received. Participants were Jeffrey Jones, SDS Organizational Secretary, Elaine Brown, heretofore mentioned in connection with the Friends of the Panthers in Los Angeles, Nan Cox, a Panther Field Marshal, and Black Panther attorney Charles R. Garry. The featured speaker for the conference, and by far the most fiery, was New York lawyer William Kunstler, counsel for the Chicago Seven and whose speech at Santa Barbara recently was followed by a frenzied student demonstration that caused great damage, many arrests and personal injuries. Kunstler spoke of the theft of 40 M-1 rifles at Plainfield, New Jersey, during the uprising there in 1967. He added that since the theft only one white police officer had been seen on the Plainfield streets. His meaning was plain and received with enthusiasm.

On Sunday July 20 there were programs at the park on Peoples' Health v. Fascism, Religion v. Fascism, and American Servicemen v. Fascism; the showing of a film at Merritt College and a final session at Oakland Auditorium on Decentralization and Community Control of Police. Participants on the discussion on Religion and Fascism were Reverend Earl Neil, of St. Augustine's Church in Oakland, and Reverend Eugene Boyle from Sacred Heart Church in San Francisco. There was also a program on Peoples' Health v. Fascism, led by Dr. Philip Shapiro, a founder of the Panther Medical Adjunct Group and a sponsor of the conference.

The Sunday session in the Auditorium featured a slide film description of the mechanics of organizing community petitions for the purpose of assuming control of local police departments. Narration of this portion of the pro-

gram was by Bobby Seale and Peter Franck, Franck being a well-known Bay area Civil Rights attorney.

After several unimportant speeches, Seale made the address that closed the meeting. He called for unity of all radical and militant organizations, which evoked calls asking about the summary exclusion of the Maoist Progressive Labor and Trotskyist groups. By this time it had become evident that the CPUSA was solidly in control of the conference. The presence of so many high officials from the Communist Party who participated actively in proceedings, together with many others who did not, was enough to establish this fact. There was also the exclusion of the major groups that were ideologically opposed to and rivals of the CPUSA, together with the abrupt ideological swing by the Panthers from Maoism to the Moscow line.

Seale was forced in a new role by following the CP strategy which is more subtle than was the previous Panther program. Consequently he urged circulating petitions urging control of police, which drew incredulous protests from the most militant delegates. He anticipated the charge of Communist domination, and denied it, but subsequent contacts with those who attended the conference, both as delegates and observers, indicated that his protests were not convincing.

At the Trotskyists' Militant Labor Forum in Los Angeles on July 25 1969, Joel Britton (not to be confused with Charles and Barbara Brittin), stated that the entire affair was poorly organized and badly run. Britton, who is SWP organizer for the Los Angeles region, said that when Herbert Aptheker spoke he received a standing ovation from his supporters, and estimated their number at about 300, and that toward the end of the speech the boos, according to Britton, came from observers and the more aggressive elements among the delegates.

In the *New Worker* in July 1969, an article written before the Oakland conference by M. I. Laski was headed "Right Wing Communists Run Anti-Fascist Show." It stated that: "The call is out from one end of the country to the other. There will be an Anti-Fascist Conference called for in Oakland the weekend of July 18. The cat is out of the bag, or more appropriately, the cat is in the bag now. What cat? The Black Panther, what else! What

bag is it in? The Right-Wing Communists headed by Gus Hall."

Four months after the Oakland meeting an article praising the Black Panthers was published in *Political Affairs*. Written by William L. Patterson, a top CP officer, it established the official Communist Party position. "The Panther Leadership," wrote Patterson, "recognized that it faced a Herculean task. But the task had to be faced. It declared itself a Marxist-Leninist Political Party, not realizing fully that so far-reaching a declaration did not *ipso facto* bring the objection sought to fruition. The Panther leaders grasped at and embraced the doctrines of Mao Tse-tung and the present leadership of the Chinese Communist Party. They failed to realize that Mao and his supporters were all for the go-it-alone idea which experience was forcing the Panthers to repudiate. They did not recognize that Maoism was a denial of the historic role the Panthers were beginning to attribute to the working class."

Referring to the United Front Against Fascism Conference at Oakland, the article continued, stating that: "While only three years in the libertarian struggle, the Black Panther Party issued a call for a United Front of Struggle Against Fascism—basing itself on the call made by George Dimitrov in 1935 at the Seventh Congress of the then existing Communist International." Then the article concluded: "The Panthers now have organized contingents in approximately 33 States. At the present they are in the center of police attacks. J. Edgar Hoover, the Fascist-minded head of the FBI, calls the Panthers the most dangerous organization in the New Left. That is some evidence of their importance. The membership of the Communist Party should stand in the forefront in defense of the Black Panthers. While conducting a dialogue with the Panthers on the differences that exist between us, this must not stand in the way of solidly supporting the efforts of the Panthers to defeat racism and bring about unity of the Black and White working class. For we know that racism feeds Fascism. The destruction of racism leads to a decisive defeat of Fascism." (*Political Affairs,* November 1969, page 7 at pages 11, 12, 13.)

Attorney William Kunstler stumps the country speaking at campuses and preaching his creed of violent action against the Establishment, and as he exhorts the Black Panthers by telling them how police were intimidated in the New Jersey community, and with the new Panther campaign to gain control of local police agencies and render them impotent by harassment, assassinations and political pressure, the plan was clear. It would be useless for us to attempt any description of the psychotic hatred for all law enforcement officers that exists in the Panther organization. It simply defies description, but some of the exhibits presented herewith will serve better than words to convey that condition.

The Panthers are being controlled by the CPUSA to serve as its shock troops on the front line of the revolution. Since the Oakland meeting, new and more sophisticated security measures have been adopted to prevent infiltration of the organization by counter-subversive agents. At the same time a Mafia-like vengence threatens all members who cooperate with law enforcement agencies.

Larry Powell and his wife Jean have disclosed to Federal authorities the life of horror they spent as Panthers —the assassination plots against police and informers alike, and the underground "Black Guard" originally credited to Robert F. Williams three years before the Panthers were organized. Powell himself was a member, and described the assignments of killing and bombing assigned to members of this underground unit by the Black Panther officials. (*Senate Internal Security Subcommittee transcripts on Riots, Civil and Criminal Disorders,* Washington, D.C.)

Robert F. Williams and the Revolutionary Action Movement

The Revolutionary Action Movement was founded at Detroit by Robert F. Williams in 1963. At first confined to New York City and some of the Southern states, the organization spread its inflammatory propaganda throughout the country with deadly effect. A handbook on *Guerrilla Warfare,* written by Williams, has been widely used by Black Activists, and his publications have been carried by Communist bookstores including the Progressive Bookstore in Los Angeles.

Williams served in the Marine Corps, and was ousted from his position as President of the NAACP chapter in Monroe, North Carolina, when he found it too pallid for his purposes and engaged on a program of violence. In 1960 he travelled to Cuba, and in August of the following year was indicted on a charge of kidnapping. Without an American passport, and a fugitive from justice, Williams established his headquarters in Havana, where he published his propaganda organ, *The Crusader,* a publication which he had started in 1958, and he made radio broadcasts over the Cuban short-wave radio facility and called his program Radio Free Dixie. Having been active in the Communist-dominated Fair Play for Cuba Committee in this country Williams was well received in Cuba and met with delegations of American student revolutionaries who came to that country. He finally became disillusioned, however, his popularity faded, and he left for Peking in 1966 where he continued publishing *The Crusader.* A study of the language in this tract as published in Cuba with the style seen in previous issues strongly indicates that at least some of the contents were written by other people. Several issues contained explicit instructions for sabotage and guerrilla warfare. Thus the issue for February 1964, stated:

> "The weapons of defense employed by Afro-American Freedom Fighters must consist of a poor man's arsenal. Gasoline fire bombs, lye or acid bombs can be used extensively. During the night hours such weapons thrown from roof tops will make the streets impossible for racist cops to patrol. Hand grenades, bazookas, light mortars, rocket launchers, machine guns and ammunition can be bought clandestinely from servicemen anxious to make a fast dollar. Freedom Fighters in military camps can be contacted to give instructions on usage."

In *The Crusader,* Vol. 10, No. 2, Summer, 1969, marked "Robert F. Williams, 1 Tai Chi Chang, Peking, China, this language appears on Page 17:

> "Recently, in many cities of the world we have witnessed a limited application of urban guerrilla warfare or street combat. In these mere skirmishes we have been given some idea of the colossal poten-

tial of what could really happen, and how, in such a conflict. Conventional military science and tactics can be rendered ineffectual by massive peoples war. The poor man's arsenal of light arms and home-devised weapons can wreak havoc on a nation. Extensive disbursal of combatants makes it impossible for repressive forces to concentrate the necessary power to quell the resistance. When thousands of Freedom Fighters fan out over a city in a campaign of obstruction and destruction, paralysis prevails. A salient feature of this type of conflict is that all of its destructive action takes place on the enemy's own premises. Both offensive and defensive combat extract a heavy toll from the Establishment. A government no matter how tyrannic cannot wage an extensive war of attrition against its own citizenry without indulging in self-destruction. Less than 10% of a given population can bring a highly mechanized and industrialized tyranny to its knees in a surprisingly short span of time. If the 10% is well organized and devoutly committed to all-out urban guerrilla warfare. Urban guerrilla warfare does not mean that the countryside is completely neglected; it means that most mass activity would be concentrated in urban communities because most of the population is there. It means the rural campaigns would be conducted on the basis of targets being selected out of the dictates of necessity, over-all strategy and diversionary tactics."

We have an original copy of this publication, the front cover if which is reproduced as an exhibit. In addition, one of our covert agents entered into a correspondence with Williams while he was in China and we reproduce a letter from him in his handwriting dated April 23, 1968.

During his absence from the United States, Williams' Revolutionary Action Movement was conducted by others, and carried out the founders' precepts diligently. In February 1965 RAM members were apprehended before they could carry out a plan to blow up the Statue of Liberty and the Washington Monument; in June 1967 sixteen RAM members were arrested for plotting the assassination of Negro leaders Roy Wilkins and Whitney Young, who have been steadfast representatives of the

majority of Negroes and have counseled against the use of violent methods; in September 1967 four RAM members were arrested in a plot to poison police and government officials in the event of widespread rioting.

In August 1969 it was announced that Williams would shortly return to the United States, but there was some difficulty in finding an airline company that would agree to book his passage. Having been deprived of his American passport, travel was difficult and some surprise was occasioned when it was learned that the State Department had issued an American passport to him and a few days later he boarded a TWA flight for the United States. The only passengers were Robert F. Williams and his attorney.

Having returned to this country, Williams professed a change of heart regarding the use of violence, stating that he had determined after experiences in various Communist countries that it was better to concentrate on educating the races to live harmoniously together and to work to improve the plight of his people. There is excellent authority to indicate that Williams has already been debriefed by both the CIA and the FBI, and that he has also given testimony in a closed session of the Senate Internal Security Subcommittee.

Obviously, official agencies will regard Williams statements with much suspicion, but if he has indeed disclosed what he could tell about meetings with delegations to Cuba, about activist groups and the flow of money and propaganda from abroad to revolutionary activists here—the story would not only be sensational but of immense aid in the effort to stem the tide of guerrilla warfare that now threatens our security.

Ron Karenga

Ron Karenga leads a group known simply as US, its headquarters being located at 7228 South Broadway, Los Angeles. Having attended the University of California in Los Angeles, Karenga still has a following there in members of his US group. During the past two years a bitter factional struggle has arisen between Karenga's following and the Black Panthers at UCLA over control of the Black Student Union, a loose coalition of Negro students that varies greatly according to the conditions existing at

the institution where units of the organization are located. It has no central control organization, and at some institutions the membership is reasonable and moderate, and members have volunteered to help suppress violent demonstrations; other units are extremely violent, and have been the leaders in some of the most violent rebellions we have yet seen. All are, of course, dedicated to improving the status of the Black minority.

Although small in size, members of the Karenga US have repeatedly demonstrated their militancy. On Friday, January 17, 1969, two Black Panther members, John Huggins and Alprentice Carter were in the Campbell Hall cafeteria on the UCLA campus. Both men were students, enrolled in a special "high potential" program, restricted to Black and Mexican-American students. In a heated dispute with US members, the two Panthers were killed by gun fire. One of the alleged assailants, George Philip Steiner, was also enrolled in the "high potential" program, and with his brother Larry and three other US members was indicted on charges of murder and conspiracy. Two of the five defendants were convicted, and a third was recently sentenced for bank robbery.

Ron Karenga has expressed a desire for conciliation with the Panthers—but negotiations between the two Black organizations ceased after the wounding of Panther Ronald Freeman in Los Angeles on March 14, 1969, an assault attributed by his fellow members to the Karenga group, and which has served to widen the breach.

Mike Laski and the CP–(M-L)

Michael Isaac Laski organized a Marxist study group at UCLA when he was a student there in 1960. Before leaving in 1962 he was on the editorial board of an independent socialist journal called *Inquiry,* the first issue of which appeared on September 17, 1962. Other members of its editorial board were Arnold M. Hoffman, Robert A. Manning, Ronald Ridenour and Doctor Councill S. Taylor.

In 1964 Laski was organizing Negroes and indoctrinating them with Maoist Communism, particularly in the Watts area of Los Angeles County. After the riots at Watts in August 1965, his recruiting and indoctrination

activities were greatly accelerated, accompanied by a vicious propaganda attack against the Los Angeles Police Department.

Like the Progressive Labor Party, Laski's group was too radical and impatient for the CPUSA and consequently formed its own organization in September 1965, which they named the Communist Party, (Marxist-Leninist). Headquarters were established at 1313 East Firestone Boulevard, Los Angeles and thereafter Laski became a familiar figure at rallies and demonstrations throughout the state, especially on college campuses. He possessed boundless energy, was an excellent organizer, but was highly emotional both on and off the podium. He incurred the enmity of many radical groups, and finally it even included his own, and he was ousted summarily from the organization he founded and ran for several years. But that didn't stop Laski. After he was expelled in June 1968, he immediately started the United Front (Marxist-Leninist) and opened a new headquarters at 11858 South Main Street, Los Angeles. He had edited two papers for the old organization, *Peoples Voice* and *Red Flag*. The new organization issued a paper called the *New Worker* in 1969, which he also edited. The United Front (M-L) offices consist of a main office, several smaller offices, a gymnasium where karate and other forms of self-defense are taught, a library, a kitchen and sleeping quarters. The walls are covered with pictures of Marx, Engels and Mao Tse-tung and large posters of life in the Chinese People's Republic. There are ample supplies of Red Chinese propaganda in the library, including the ubiquitous little red books of Mao's thoughts. Raymond "Masai" Hewett was a disciple of Laski's before becoming an official in the Black Panther Party, which is some indication of the fact that although small in numbers, Laski's United Front (M-L) is nonetheless diligently at work turning out a fanatically violent activist cadre, mostly Negroes, schooled in the Maoist techniques of guerrilla warfare and permanent revolution.

BLACK PANTHER PARTY
EXHIBIT I

STATEMENT BY
COMRADE MAO TSE-TUNG,
CHAIRMAN OF
THE CENTRAL COMMITTEE OF
THE COMMUNIST PARTY
OF CHINA,
IN SUPPORT OF
THE AFRO-AMERICAN STRUGGLE
AGAINST VIOLENT REPRESSION

BLACK PANTHER PARTY
EXHIBIT II

A REPORT on the UNITED FRONT AGAINST FASCISM CONFERENCE

Speaker:
Joel Britton
Organizer, L.A. Socialist Workers Party

Plus the Cuban Short Film
"NOW!"

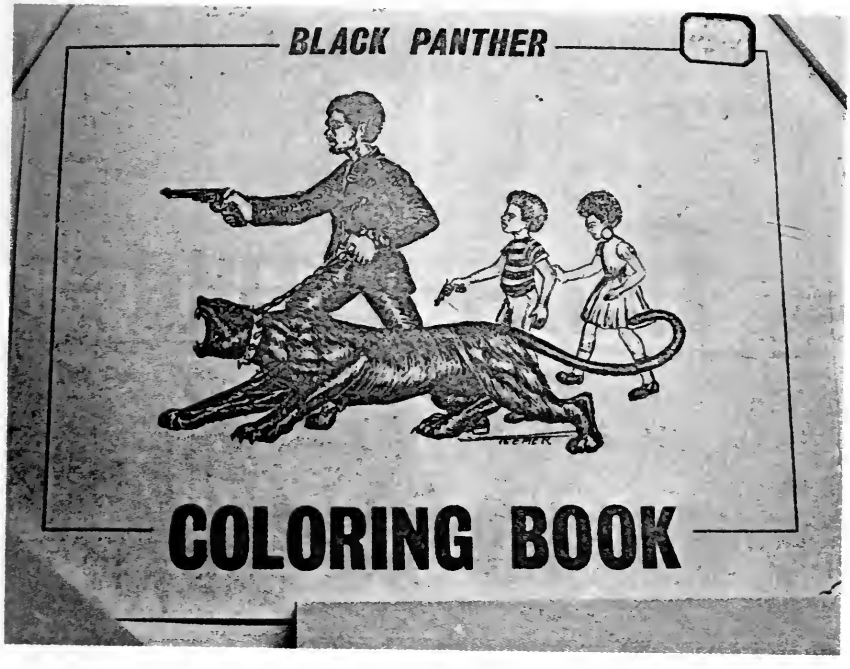
Fri. July 25 8:30pm
1702 E. 4th St. L.A.
269 4953

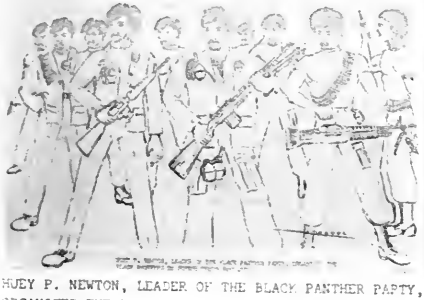
Militant Labor Forum

Donation: $1.00
H.S. Students: 50¢

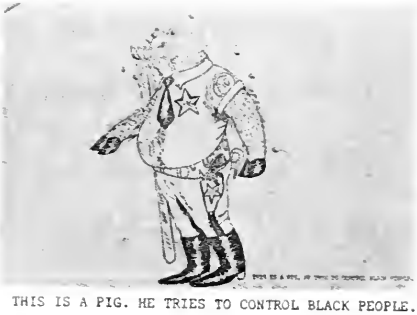
● Reminder:
L.A. Socialist Summer School series on the Chinese Revolution & Maoism
July 27th, Aug. 3rd, 10th & 16th
8:00 P.M., 1702 E. 4th Street, L.A.

BLACK PANTHER PARTY
EXHIBIT III





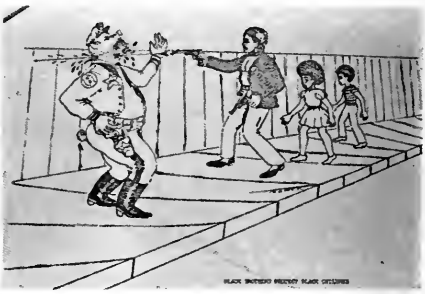
HUEY P. NEWTON, LEADER OF THE BLACK PANTHER PARTY, ORGANIZED THE BLACK BROTHERS TO DEFEND THEIR FAMILIES.



THIS IS A PIG. HE TRIES TO CONTROL BLACK PEOPLE.

BLACK PANTHER PARTY
EXHIBIT III—Continued

THE PIG TRYS TO PROTECT THE WHITE STORES IN BLACK COMMUNITIES THAT ROB BLACK PEOPLE.



BLACK BROTHERS PROTECT BLACK CHILDREN

THE PIG IS AFRAID OF BLACK CHILDREN BECAUSE THEY ARE BRAVE WARRIORS

BROTHERS AND SISTERS DEAL WITH THE WHITE STORE OWNER THAT ROBS BLACK PEOPLE

THE JUNIOR PANTHER DEFENDS HIS MOTHER

THE ONLY GOOD PIG, IS A DEAD PIG

BLACK PANTHER PARTY
EXHIBIT IV

PEOPLE! ORGANIZATIONS! GROUPS! YIPPIES! POLITICAL PARTIES! WORKERS! STUDENTS! PEASANT-FARMERS! YOU THE LUMPEN! POOR PEOPLE. BLACK PEOPLE. MEXICAN AMERICANS. PUERTO RICANS. CHINESE. ETC. ETC.

WE MUST DEVELOP A

UNITED FRONT AGAINST FASCISM

BERKELEY JAMES RECTOR MURDERED BY FASCIST PIG

FASCISM, ('THE POWER OF FINANCE CAPITAL...') VICIOUSLY BRUTALIZE, GAS, SHOOT, AND MURDER PEOPLE WHO WANT AND NEED LAND, BREAD, HOUSING, EDUCATION, CLOTHING, JUSTICE AND PEACE FOR SURVIVAL.

HUEY P. NEWTON, MINISTER OF DEFENSE, POLITICAL PRISONER.

BECAUSE OF HIS GREAT REVOLUTIONARY LEADERSHIP FOR BLACK PEOPLE'S RIGHT TO SELF DETERMINATION, HUEY IS IN PRISON IN A 5 X 10 CELL AND WITHOUT BAIL. HUEY AWAITS MISTRIAL MOTION WHILE WRETCHED PRISONS INCARCERATE HIM; FASCISM, ('THE POWER OF FINANCE CAPITAL ITSELF')

NEW YORK PANTHER 21 AND CONN. PANTHER LEADERSHIP

EAST COAST PANTHERS OVER 40 MEMBERS OF THE MAIN LEADERSHIP CHARGED WITH ABSURD CONSPIRACIES AND "MURDER", KEPT IN JAIL WITHOUT BAIL, NOT ALLOWED TO SEE FAMILIES AND LAWYERS MOST OF THE TIME. FASCISM, (THE POWER OF FINANCE CAPITAL ITSELF).

CONFERENCE REGISTRATION FORM (BACK PAGE)
U.F.A.F. CONFERENCE HEADQUATERS B.P.P.
(PH.843 0104)
3106 SHATTUCK AVE. BERK. CALIF. 94705

REVOLUTIONARY CONFERENCE
FOR A

UNITED FRONT AGAINST FASCISM

IN AMERICA

FASCISM; THE POWER OF FINANCE CAPITAL

OAKLAND CALIFORNIA
JULY 18, 19, 20, AND 21ST

THIS CONFERENCE IS CALLED AND ORGANIZED BY THE BLACK PANTHER PARTY, THE INT'L LIBERATION SCHOOL AND OTHER COMM. ORGANIZATIONS AND GROUPS.

SOME OBJECTIVES TO DEVELOP A UNITED FRONT AGAINST FASCISM

- COMMUNITY CONTROL OF POLICE ON NATIONAL SCALE.
- FREEDOM OF ALL POLITICAL PRISONERS AND POLITICAL FREEDOM.
- POLITICAL PROGRAM FOR ALL THE POOR, BLACK, OPPRESSED WORKERS AND PEOPLE OF AMERICA.
- MILITARY OFF CAMPUS.
- SELF DEFENSE.

BLACK PANTHER PARTY
EXHIBIT V

Black Panthers "Free Breakfast" and Coloring Book

The *New York Post* has examined the Black Panther breakfast program at Friendship Baptist Church in Harlem, and has come away impressed. Tim Findley of the *San Francisco Chronicle* looked in on that city's early morning chow line for underprivileged Negro children at Sacred Heart Catholic Church (Fr. James Kennedy) and St. Augustine Episcopal Church (Rev. Earl Neil) and was plainly excited by the sight. Reporters painstakingly list the breakfast menu, and the children's squeals of delight, but newsmen almost universally fail to report that Black Panther meals really promote a breakfast food shot from guns – bullets.

On June 24 a San Francisco Police intelligence sergeant, Ben Lashkoff, told a Senate committee in Washington that one of the propaganda devices employed at the breakfast programs was a *Black Panther Coloring Book*, 22 pages of indoctrination in hatred and violence. The book is heavy with encouragement for children to distrust, to hate, and even to kill police officers. (See COMBAT exclusive June 15, 1969.)

After Lashkoff's revelations – which shocked the nation – sympathizers of the Panthers jumped to the defense. None was so eager as Father Eugene J. Boyle, assistant pastor at Sacred Heart, who issued a press statement repeating the Black Panther party line: only a few copies were printed, and the identity of those who distributed it at Sacred Heart is unknown. Father Boyle engaged in some propagandizing: the books were printed "for evaluation" only; he hinted darkly that Larry Powell, a Panther who has defected and testified before Congress (and now called an *agent provocateur* by the Panthers), might have been responsible because he had been working in the BPP mimeograph room, and besides, says the priest, the author of the coloring book "admits that the book does not conform to the Party policy, because of its racist overtones."

Father Boyle's excuses cannot wash away what should be apparent: Printing 25-50 books for "evaluation" will earn the Panthers a footnote in publishing history – no other publisher engages in this waste practice. At the time Larry Powell worked in the BPP print shop he was a *bona fide* Black Panther and did not defect until, according to his testimony, he was told to commit armed robberies to help out with BPP finances (Father Boyle's casual attempt to blame a *defected* Panther for Panther mischief is, in short, scandalous and irresponsible.) The author of the coloring book, Mark Anthony Teemer, is cultural lieutenant of the Sacramento chapter of the BPP, is a Panther in good standing, and his coloring book *definitely conforms* to the Party policy. Similar drawings by Teemer have been published in *Black Panther*, official BPP newspaper, and follow the kill-the-cops art style of Emory Douglas, BPP Minister of Culture and frequent contributor to *Black Panther*. (COMBAT reprinted some of these illustrations in the Oct. 1, 1968 issue.) If the BPP and Father Boyle wish to repudiate the BP Coloring Book at this time they will also have to repudiate the *Black Panther* newspaper, which on April 20, 1969 published another Teemer cartoon (see page 4), obviously the approved BPP party line. Readers will note it is similar to the "cartoons" of the coloring book. Similar Teemer drawings decorate the June 28 *Black Panther*.

The Coloring Book is an undistorted reflection of the whole breakfast program, which is nothing more than the revolutionary indoctrination of children.

The Panthers claim to feed an astronomical number of children every day (10,000 in Chicago, 2,000 in Oakland and San Francisco). More accurately, the Panthers feed 400-500 children daily, nationwide, according to a COMBAT survey.

The wherewithal of Panther generosity – the bacon, eggs, milk, cereal – is extracted, under not too subtle pressure, from businessmen. Panthers lounge into a store – usually a small family-owned shop – and inform the proprietor how much he is expected to "donate." One issue of *Black Panther* archly commented that fire had destroyed one San Francisco meat-processing plant that had failed to contribute. *Black Panther* explains another method: "Safeway stores whose top lieutenant is also in the drivers seat of Oakland's political machinery; one fascist Hooper is loosing anywhere from 15 to 20,000 dollars per day as a result of the Black Panther Party's boycotts. It is very insane for these avaricious fools to refuse to contribute $100 per week to the free Breakfast for Children Program while they are loosing so much per day." *Movement*, a San Francisco paper close to the new revolutionary Communist group, Revolutionary Union, carried an item in June: "At a lively meeting of children and some mothers, the Panthers explained to the children how the power of the people makes merchants donate food to the Program. They suggested a boycott against Safeway .... One little boy, about seven, shouted out: 'I'll tell my mama, don't buy. Right on.' He was clutching a Little Red Book (i.e., *Quotations from Chairman Mao Tse-Tung*) in one hand. No doubt he did tell his mother. And so did a lot of other children. Two weeks later, the Panthers announced that Safeway began donating food to the Program."

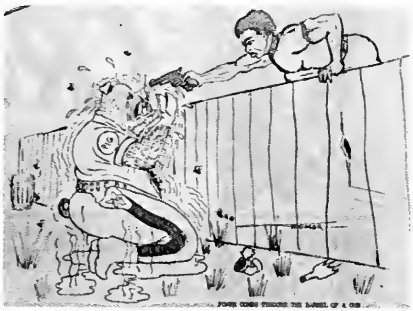
Panthers record the names and addresses of the children who come to their breakfasts, and contact the parents to ensure that the Panthers are credited with the largesse, and to propagandize and recruit the parents.

While the children are fed they are lectured on "civil rights" by Panthers (many of whom have criminal records unrelated to any civil rights activity), are reminded of Panther philanthropy. The Los Angeles BPP program began April 29 at the University Seventh Day Adventist Church (Rev. Lorenzo Payte, associate pastor), and a Panther correspondent writes, "The children we feed now are beautiful and really relate to the breakfast and to the Party. They want to know all about Huey, Eldridge, Bunchy, and John and the Party and its programs. They wear our buttons and ask about the paper daily." The *Movement* quotes their little chants: "I am a revolutionary. I am a revolutionary. There's gonna be some barbecue if Huey's not set free. Power to the people." The Communist Party's *Daily World*, which now devotes almost a page daily to BPP activity, records the chants at breakfast at Antioch Baptist Church in Brooklyn: "All power to the people. I'm a revolutionary. Who are we? The little Black Panthers. What do we want? Free Huey Right on! Free Huey Right on!" (The reference is to Huey P. Newton, Panther Minister of Defense, now serving a prison term for killing a policeman.)

The *Black Panther Coloring Book* is not a police provocation – it is accurate testimony of current Black Panther Party policies. It could be appropriately subtitled *A Child's Garden of Murder*.– Editors.

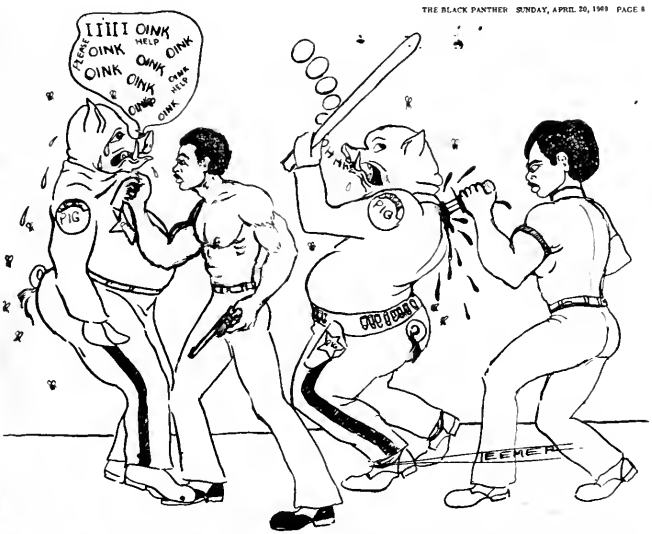
BLACK PANTHER PARTY
EXHIBIT V—Continued

THE PIG IS RUNNING AWAY FROM BLACK PEOPLE, "RUN PIG RUN."



POWER COMES THROUGH THE BARREL OF A GUN

Chairman Mao Right On ! Last message to children is straight from *Quotations From Chairman Mao Tse-Tung:* "Every Communist must grasp the truth, 'Political power grows out of the barrel of a gun.' "



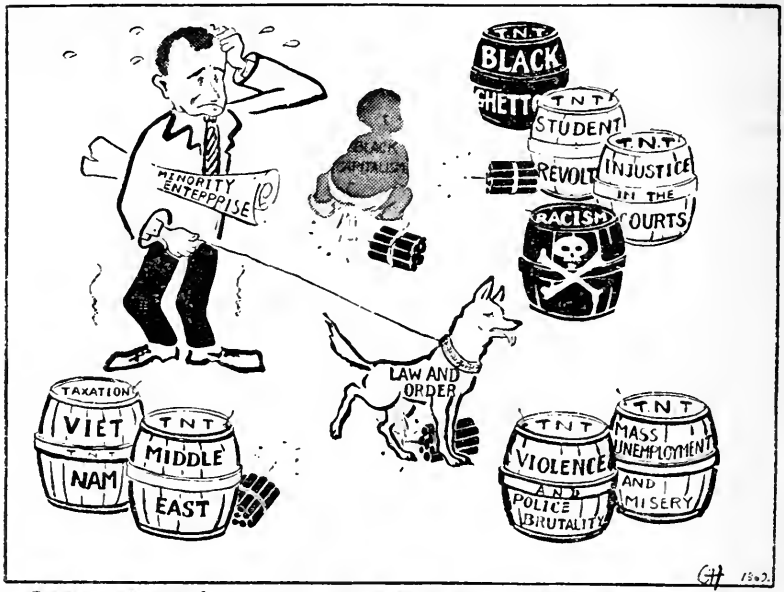
The Excuse for This, Father Boyle? Illustration, by coloring book author Mark Anthony Teemer, appeared in official Black Panther newspaper three weeks before distribution of coloring book in San Francisco. Paper has circulation over 10,000, is not printed " for evaluation, " is also given to children.

BLACK PANTHER PARTY
EXHIBIT VI

THE CRUSADER
NEWSLETTER

ROBERT F. WILLIAMS, Publisher — IN EXILE —

VOL. 10 - No. 2 SUMMER 1969



MY BAG'S UP TIGHT, COOL IT !

THE DEPRIVED: REBELLION IN THE STREETS

That nation which insists on a society of law and order without giving prior attention to justice arbitrarily demands submission to tyranny. Such a government, consequently, must be prepared to enforce its demands with a precipitous brute force that ultimately decays and errodes the very pillars on which its security rests. The more coercion and repressive force a government is inclined to unjustly use against a sector of its population the wider the area of conflict will become, until finally it unwittingly succeeds in isolating

BLACK PANTHER PARTY
EXHIBIT VII

1 Tai Chi Chang
Peking, China
April 23, 1968

[redacted] California
USA

Dear Brother [redacted]

Your letter of March 21 has been received, and as usual it was good hearing from you. Thanks a million for the support. I will keep you informed. Things are not clear enough yet. I am trying to get some other things arranged so I will know where I stand.

I am glad to know that you are in touch with Brother Greenwood, I count him as one of my reliable friends.

The Martin Luther King affair should have really left no doubt in our people's minds as to where its really "at", as far as we are concerned. It is a certain thing that the man is even opposed to moderate and non-violent struggle for Black rights in the racist U.S.A. King's case offers a strong arguement for seperation. The situation now calls for unshakable unity and massive organizational work.

Yours for Black Liberation,

Robert F. Williams

Rob

The Brown Berets

The Brown Berets, a militant Mexican youth organization, was started in 1967 by David Sanchez, Carlos Montez and Ralph Ramirez under the title of Young Citizens for Community Action. The name was later changed to Young Chicanos for Community Action, and finally to the Brown Berets. For a while, during the early stages of the organization, it was little more than a group of young Mexican-Americans determined to improve the lot of their people and to have some place where they could meet and discuss their problems. For a short time they had such a center at Father John Luci's Episcopal Church of the Epiphany at 2808 Altura Street, Los Angeles. As the organization attracted more members and adopted a more militant stance, larger quarters became necessary and a central office was established at 318 North Soto Street. Thereafter it moved to 4715 East Olympic Boulevard, 2641 East Fourth Street, and to 3045 East Whittier Boulevard in Los Angeles.

While the organization was gathering momentum in 1968, it preferred to hold itself aloof from the other more obvious Marxist radical groups. When invited to participate in the Liberation University courses, David Sanchez stated that while some members might wish to do so, the Brown Berets as an organization could not participate because it might alienate much of its broad-based community support, which, among the Mexican-American population of Los Angeles, was dominantly conservative.

The headquarters on Soto Street were distinguished by a bright yellow front and the sign "Brown Beret Headquarters" prominently displayed. Across the street and a few doors away was the headquarters of the Mexican-American Social Service, headed by Delfino Varela, whom we have heretofore described as the former head of the Zapapa section of the CPUSA in Los Angeles and who for many years has been an active figure on its Mexican Commission. We should mention, also, another organization that is now active in California and other Pacific southwest states, the Southwest Council of La Raza (The Cause), the jurisdiction of which comprises the states of Arizona, California, Colorado, New Mexico and Texas. It is administered by a Board of 26 and its president is Maclovio Barraza. Mr. Barraza has been identified by

the Subversive Activities Control Board as a member of the Communist Party, and presides over the Council which recently received a grant of $1,300,000.00 from the Ford Foundation. Funds channeled through the Council for La Raza are intended to be used for the improvement of the general conditions of the Mexican-American minority. According to an editorial in the *Arizona Daily Star,* "Some Ford Foundation money has been spent in staging marches designed to stir up Mexican-American youth, and in financing campaigns against such persons as Rep. Henry Gonzales of Texas, whose Mexican-American credentials are of the highest order. In other words, troublemaking and devisiveness, plus efforts to grab ethnic-group power have been the aims of those using the Ford Foundation money." Headquarters for the Southwest Council of La Raza is at Phoenix, Arizona, but its principal activity is concentrated at Los Angeles, San Francisco, and Austin, Texas. The operation of this large and well-financed private concern, with a Communist at its head, obviously exerts a powerful influence on the Mexican-American minority throughout its domain including the Brown Berets (*Tucson Daily Citizen,* March 23, 1960; *Arizona Daily Star,* March 23, 1970; Subversive Activities Control Board Proceedings and Records, Docket No. 125-62.)

The Soto Street headquarters was much like that occupied by Laski: front offices, library, a large meeting room and gymnasium. But there was no lavish display of Maoist propaganda, with the exception of posters lauding the late Ernesto Che Guevara and Fidel Castro. The Soto Street headquarters was occupied for approximately one year after the creation of the Brown Berets, and about the time that it commenced its collaboration with most of the radical front organizations in Southern California, accepting aid from the Los Angeles Committee for the Defense of the Bill of Rights, which we have heretofore described, and operating in particularly close cooperation with the Black Panthers.

In addition to Che Guevara and Fidel Castro, another militant Mexican figure has aroused widespread support among the Berets. He is Reies Lopez Tijerina, who led a guerrilla band in an assault on the village of Tierra Amarilla and the Courthouse in New Mexico in June, 1967.

He had been expelled from Mexico in 1964 because of his radical activities in that country. Tijerina has made several visits to California, and was a featured speaker at a rally in East Los Angeles College Stadium at an affair sponsored by the Peace Action Council on October 15, 1967. With him was another prominent Mexican activist, Rudolfo "Corky" Gonzales, who also spoke.

On November 5, 1967, Gonzales was billed as the featured speaker at a fund-raising banquet for the *Peoples' World,* but approached the rostrum in a somewhat antagonistic mood after being compelled to wait for almost three hours "while other speakers and entertainers glorified the Soviet Union's 50th Anniversary and begged endlessly for money to support the Old Left newspaper." (*Barraza,* Nov. 15, 1967, page 6.)

The speaker declared that while financial support would be welcomed from the other radical organizations, the Mexican-American Revolutionary Movement must make its own decisions and evolve its own ideology. But with the passing months, and with the appearance of the Brown Berets, more and more representatives of the Mexican-American Left appeared at Comunist front meetings.

On Wednesday evening, August 21, 1968, a special meeting was held in Channing Hall, First Unitarian Church, Los Angeles, to plan a demonstration against the Los Angeles Police Department. Two members of the Brown Berets attended this affair in uniform. There were 210 people present, and the chairman was Irving Sarnoff. Among the others present were Rose Chernin, Mike McCabe, William Hathaway, Harold Schultz, Nemmy Sparks, Pierre Mandel, Mike Yueff, Jerry Palmer and Ron Ridenour.

Two days later a meeting of the Committee on Latin-American Solidarity was held at the office of the Peace Action Council, 555 Northwestern Avenue, Los Angeles. Chairman was Irving Sarnoff, and among those who attended were Rauel Ruiz, Editor of *La Raza,* recently returned from Cuba. A former priest, Blase Bonpane, who had been expelled from Guatemala for radical activities, acted as translator on this occasion.

Demonstrations

In 1968 the Brown Beret headquarters moved to a new location at 2641 East Fourth Street, Los Angeles, which was adjacent to Roosevelt High School. This institution has an unusually large proportion of Mexican-American and Negro students, and for the past two years has been beset with a series of violent demonstrations. The *Chicano Student News,* March 15, 1968, featured an account of high school student walkouts and put the figures at 300 from Wilson High School on March 1, 1968; 2000 from Garfield High School on March 5; 4,500 from Lincoln, Roosevelt and Garfield High Schools on March 6; 2000 from Garfield and Belmont High Schools on March 7 and 5,000 from Lincoln, Roosevelt and Garfield High Schools on March 8. Interviews with Principal Alfonso Perez, at Roosevelt High School, disclosed that the leaders of the demonstrations were members of the Brown Berets and the Black Student Union.

La Raza for June 7, 1968, carried a statement to the effect that Mr. Bert Corona, President of the Mexican-American Political Association in California, announced that his organization supported the Brown Berets and their demands for civilian police review boards and a guaranteed annual income of $5,000.00 for all Mexican-American families. Mr. Corona, a former member of the Board of Directors of the Los Angeles Communist School with Mrs. LaRue McCormick, Eva Shafran and Leo Gallagher, all identified Communists. He was also a member of Mrs. McCormick's Committee for the Defense of Mexican-American Youth in 1942, on which Leo Gallagher and Philip Connelly were also members. The latter, a Communist, was then President of the California State CIO, and later became the husband of Dorthy Healey. In 1966 Mr. Corona was a sponsor of the Statewide Conference for New Politics, spearheaded by Robert Scheer. Other sponsors were Bettina Aptheker, Irving Sarnoff, James Berland, Farrell Broslawsky, Dale Gronemeier, Dr. Carlton Goodlett, John Haag, Donald Kalish, Terence Hallinan and Delfino Varela. (*Peoples' World,* October 26, 1942; 1947 California Report, page 45; 1967 California Report, page 111.)

On June 7, 1969, ten defendants were indicted for starting fires in the Los Angeles Biltmore Hotel for the pur-

pose of disrupting Governor Reagan's speech. The incident had occurred the preceding April and a major disaster was prevented only by the courageous work and information provided by an undercover agent from the Los Angeles Police Department.

The attitude of at least a portion of the young Mexican-American radicals was expressed at a meeting of the Chicano Youth Students Conference at Denver, Colorado, which was held from March 27 to 31, 1969, and attended by 1500 delegates, 143 of whom were from Los Angeles. *Machete,* a Los Angeles City College publication issued by Chicano students, April 15, 1969, quoted from a resolution adopted at the Conference: "We will have to do away with our oppressor's entire system of exploitation. In order to do this we must build a revolutionary organization which will fight on all levels to improve our conditions here and now, while at the same time seeing the longer range struggle, which will definitely end a racist society, exploration, and guarantee our rights."

Trouble at Coachella

On Sunday, April 5, 1970, the United Farm Workers Organizing Committee, headed by Cesar Chavez, held a rally at Coachella. The occasion naturally attracted a large crowd of sympathizers, and in the evening a dance was held in the City of Coachella. This community has a population of approximately 9,000 people, 80% of whom are of Mexican origin. The majority of them are model citizens who have no sympathy with the violence and the revolutionary tactics employed by a minority of young activists. As the dance progressed, two young men attempted to enter the premises without paying the admission charge, seized control of the public address system, and disrupted the otherwise peaceful affair. Those in charge of the dance asked for police assistance, and when officers arrived to eject the troublemakers, they appealed for help to the crowd and the police were attacked. A riot ensued that involved 400 frenzied people who were hurling rocks, bottles, fire bombs and breaking windows and otherwise engaging in all the acts of violence and destruction that have now become familiar in many of our California communities.

Assistance was quickly summoned and officers arrived from Banning, Indio, Palm Springs, the Highway Patrol and the Border Patrol. The riot was quelled, but not until several people were injured, an attempt was made to burn the house of the Mayor of Coachella and a police officer, and a sufficient force of officers was available to prevent further eruptions of violence.

We should point out, in this connection, that Cesar Chavez was not present at these violent demonstrations and had no part in them. In our 1967 report we devoted a large section to an analysis of the United Farm Workers organization, and while we found it to be infiltrated with subversive elements, we did not find it to be either a Communist front organization or under Communist domination. An agent of the Subcommittee conferred with police officials at Coachella on April 7, 1970, and received complete assistance and cooperation. Copies of official police reports were made available, and additional corroboration of the foregoing account was obtained from law enforcement officers from some of the other participating communities.

Organization and Personnel

In 1969 there were 60 chapters of the Brown Berets in California. Officers of the Los Angeles chapter are also national officers of the organization, and their names and official positions are as follows: David Sanchez, Prime Minister; Carlos Montez, Minister of Information; Ralph Ramirez, Minister of Defense; Eric Mangancilla, Minister of Education; Gloria Arellanous, Minister of Finance and Correspondence. The Minister of Security is "underground". About 45% of the membership of the Brown Berets is female, no membership fee is charged, and applicants have a probationary period of six weeks during which they are investigated. At the end of that time, after suitable training and indoctrination, they are issued a Brown Beret and thereupon become full-fledged members of the organization.

Until the emergency of militant and revolutionary Mexican-American minority organizations, the Communist Party of California paid relatively little attention to this minority group, but during the last two years has become much more interested. In *Party Affairs,* a publi-

cation of the Communist Party of the United States, 23 West 26th Street, New York, October and November 1968, pages 26-27, we find the following language in the form of a resolution to be presented to the special National Convention, CPUSA, July 4–7, 1968:

"Up to a few years ago, the national problem of the conquered Mexican people was almost totally ignored by the nation as a whole, and our Party shares in this neglect. As the Mexican people began to develop economically and politically, however, they have become a strong force in our national life, and more and more of the various sections of American society are becoming conscious of the existence of this national minority and its impact upon the American political and economic institutions.

Our Party has played a constructive role in many of the important struggles of the Mexican people, but its role has been extremely limited, as we have shared in large measure the American ignorance and neglect of the 7½ million conquered and colonized people within our national borders. We must grapple with the problems of these people in both long range and immediate goals."

An examination of Communist propaganda publications that have been issued since the foregoing resolution was adopted, indicates that the Party has moved diligently to rectify this neglect.

Chinese Red Guards

The Red Guards, a Chinese youth organization operating out of San Francisco, has a history strikingly parallel to that of the development of the Brown Berets in Los Angeles. In 1967 a group of Chinese youths formed an organization which they called *Legitimate Ways* and opened a recreational facility on Jackson Street, in San Francisco's Chinatown. Jobs were not forthcoming, the members became dissatisfied with their condition, anticipated help from social agencies failed to materialize, and the Center was subjected to visits from police officers searching for fugitive criminals. In the meantime these young Chinese became increasingly militant and came to admire the activities of the Black Panther organization with its program of militant and violent defiance of the community. In March 1969, the organization

changed its name to the Red Guards, and opened a headquarters at 615 Jackson Street. Patterned after the Black Panther Party, some of their tenets were taken verbatim from Black Panther Party publications, and Mao's book on "Peoples' War" became the ideological text. Members of the Red Guards were taught the tactics of violent revolution, open guerrilla warfare, terrorist acts and the necessity to overthrow the government of the United States.

As the influx of young Chinese was vastly accelerated with the enactment of a 1965 Federal law under which the immigration quotas were increased, it was discovered that conditions, at least in San Francisco, were completely inadequate for the assimilation of this minority group. As the influx grew, so did the tensions, creating a condition which is admirably suited to the rapid spread of Maoist indoctrination, which has indeed been spreading since the Red Guards opened its Jackson Street headquarters.

Red Guard officers in 1965 were as follows: Chairman, Clifford Tom; Chief of Staff, Alan Fong; Minister of Defense, Ted Kajiwara; Minister of Culture, Wing Quan; Minister of Education, Alex Hing; Minister of Finance, William Lew; Minister of Justice, Steve Tookas; Communications Secretary, Christine Fong; Office Secretary, Maren Mark; Field Marshals, Marilyn Ng, Sheldon Lee, Douglas Hom, Deanne Lee, William Lew, Sadie Woo; Central Committee Members, Leland Woo, Clifford Tom, Sheldon Lee, Alan Fong, Christine Fong, Alex Hing, Deanne Lee and Maren Mark. (Conferences and Records, San Francisco Police Department; Records, U. S. Immigration and Naturalization Service, Washington, D.C.)

The Revolutionary Union

After the appearance of an article by Ed Montgomery in the March 23, 1967 issue of *The San Francisco Examiner,* we were deluged with inquiries from gravely concerned citizens. Montgomery's article described a situation that developed from Maoist study groups in and around Palo Alto. Originally known as the Red Guards, the same name subsequently adopted by the Chinese Commust group discussed previously, the name was changed to the Revolutionary Union, and the central office moved

from Palo Alto to Grant Avenue in San Francisco. Its declared goal was formation of a coalition of the most radical revolutionary groups dedicated to the violent overthrow of our government. The all-out date for an armed uprising was set for 1973.

The Montgomery article, based on interviews with persons who had attended some of the study sessions, asserted that the organization planned an assassination of political leaders, advised soldiers to murder their officers, counselled the killing of policemen and their families, the release of all prisoners from penal institutions, the deliberate provoking of confrontations against law enforcement agencies, and a widespread campaign of terror. The article specifically mentioned H. Bruce Franklin, associate professor of English at Stanford, as a source of information and an outspoken advocate for the takeover of Stanford and the University of California.

Some early members of these Maoist study groups were so startled and disillusioned by the savage and brutal plans for violence that they reported to the appropriate state and federal agencies, and we can report that the organization and its members have been under investigation ever since.

During the past year Robert Avakian of Berkeley has spearheaded the Revolutionary Union. He has already been mentioned as a member of the National Committee of SDS, and in previous reports has been described as having been active in Robert Scheer's Statewide Conference for New Politics and the Community for New Politics that developed from it. Avakian, one of those arrested in the invasion of Sproul Hall in December 1964, was a candidate for election to the Berkeley City Council three years later. He ran on the Community for New Politics ticket and received 10,490 votes. (1965 *California Report,* page 103; 1967 *California Report,* pages 98, 111–115, 122; *Communique for New Politics,* Oct. and Nov., 1966.)

BROWN BERETS
EXHIBIT I

WE CALL OURSELVES
VENCEREMOS BRIGADE

SENATOR EASTLAND CALLS US
"HUMAN MISSILES"

BECAUSE THE MESSAGE WE BRING HOME WITH US IS A CALL FOR SOLIDARITY AMONG ALL THE PEOPLE WHO ARE FIGHTING THE COMMON ENEMY: U.S. IMPERIALISM

THE STRUGGLE IN THE CUBAN CANEFIELDS, ON THE FRONT LINES IN VIETNAM, IN THIRD WORLD COMMUNITIES AT HOME AND AGAINST THE WAR MACHINE IN OUR COUNTRY IS THE SAME.

SPEAKERS and SLIDES AVAILABLE

CONTACT:

BRIGADE OFFICE
933 CHANNING WAY
BERKELEY
845-6326

"NOS DENOMINAMOS ASÍ PORQUE VIETNAM, CUBA Y NOSOTROS VENCEREMOS!"

BROWN BERETS
EXHIBIT II

People's Tribunal To Stop The Crimes Against Mexican People

AT
OBREGÓN PARK

SUNDAY JUNE 9th 2:00 P.M.

A People's Injunction against the POLICE

STOP THE SHERIFF's at the 3rd street station

East L.A. Committee For The Defense of The Bill of Rights

BROWN BERETS
EXHIBIT II—Continued

EL Tribunal de La Gente

Parar

LOS CRIMINES CONTRA LA RAZA

en

EL PARQUE de OBREGON

EL DOMINGO Junio 9th 2:00 p.m.

Un Mandato de La Gente contra LA POLICIA
ALTO MaL TraTamienTo

RIGHT EXTREMIST GROUPS

As the riots, mob demonstrations, destruction and open declarations of revolution have swept across the state and nation in recent months, they have provoked consequent reactions. As the Extreme Left has fomented the insurrections, so the Extreme Right has reacted with comparable vehemence.

We were quoted in *The Black Panther,* July 19, 1969, page 22, as having stated that the *National States Rights Party* was "more potentially dangerous than any of the American Nazi groups." This was an entirely accurate quotation, not taken out of context, and originally appeared in our 1963 Report on page 198. Subsequent events have given us no reason to change our estimate, although as shall be seen, the NSRP has considerable declined in power since that time.

National States' Rights Party

In 1963 we reported on activities of the National States Rights' Party in California, and gave some information concerning its national organization and strength. Since then an investigation of the movement was undertaken by the Florida Legislature's Investigating Committee, and its findings were published in July 1964. We were provided with a copy of that report, and from it we find that after NSRP was started early in 1958 at Birmingham, Alabama, it quickly developed into a racist group, actively working to prevent integration in the southern states. "It was created and has been managed," says the Florida report, "by an amalgamation of leaders formerly connected with organizations such as the United White Party, Christian Anti-Jewish Party, Realpolitical Institutions, various Ku Klux Klans and the Columbians."

In 1965 the *White American,* a monthly newspaper carrying vicious racist propaganda, appeared as the official NSRP organ. Its address was given as Box 8399, Ensley Station, Birmingham, and the March 1965 issue carried an article on page 4 that disclosed the reason for the split in the organization and its rapid disintegra-

tion. One of the leaders of the National States Right Party, almost from its inception, was a chiropractor, Dr. Edward R. Fields. He edited the NSRP publications, was entrusted with the funds, proved a capable organizer, and on many occasions acted as a spokesman for the organization. In 1965, however, he was accused of having diverted funds from the treasury and used them for his private benefit. The exposure dealt a severe blow to the organization, emotionally as well as financially. State Chairmen resigned in Ohio, Montana and Arkansas and were followed by widespread defections that ravished the entire membership. In 1965 the NSRP tried to renew its strength by recruiting ex-members of defunct Klan units, but the results were disappointing. Another reason for the swift demise of the organization is due to efficient FBI work that has resulted in the arrest of members of the organization for the illegal possession of weapons. At the present time the National States Right Party in California is virtually inactive, although a handful of members have continued their activities through other and similar organizations.

The Minutemen

The Minutemen was founded in June 1960 by Robert B. DePugh, who at the time was president of Biolab Corporation, a pharmaceutical firm dealing largely in supplies for veterinarians. Headquarters for the organization was at the home of Mr. DePugh, who resided in Norborne, Missouri. He was a former member of the John Birch Society, but as his views and advocacies proved too militant for the Society, it dropped his name from its membership rolls, and he thenceforth pursued his activities through the new organization, which soon established other chapters throughout the country. DePugh has stated that: "The policy of our organization is to form, in advance of the actual need, an underground army to fight an aggressor. So, instead of wasting our time and effort on something current, we are trying to advance or look ahead ten years and be prepared to fight the battles that will be needed then." (Minutemen Documents and Publication; *St. Louis Post-Dispatch,* June 22, 1964; *St. Louis Globe-Democrat,* June 23, 1694).

There can be no question about the militancy of the Minutemen. In August 1963, George Joseph King, Jr.,

of Long Beach was arrested after several months of undercover work on the part of Baldwin Park Police and Treasury Department Investigators. He was charged with illegal possession of two automatic pistols, one 30-caliber carbine, and several thousand rounds of ammunition. He had been attempting to sell machine guns to police officers, who he thought were prospects for the Minutemen, an organization to which he was alleged to have been affiliated. In May 1964 Treasury agents seized a small arsenal of flame-throwers, machine guns, a cannon, mortars, aerial bombs, automatic pistols and ammunition on a farm near Springfield, Illinois. Two men were arrested, and one of them, Richard Lauchli, a former paratrooper and leader of the Minutemen, was held on a $20,000.00 bond. In March 1965 a cache of 370 machine guns was found in a California warehouse owned by Erquiage Arms Company, and evidence disclosed that they had been dealing with the Minutemen organization. In December 1965 Keith D. Gilbert of Glendale was charged with participating in the illegal seizing of 1400 pounds of dynamite from the W. A. Murphy Company at Sylmar, the police having found explosives and weapons, together with ammunition and Minutemen literature at his home. (See *Los Angeles Times,* April 13, 1965; December 7, 1965.)

In 1961 Donald T. Alderman, San Diego, was regional coordinator for the Minutemen in California. He was succeeded by Troy Haughton who delivered speeches on behalf of the organization throughout the state. He spoke on August 14, 1964 under the auspices of an organization, apparently *ad hoc,* called the Southern California Freedom Councils at Knights of Columbus Hall, Van Nuys. He also delivered an address at San Jose in April 1965, during which he boasted of armed underground groups in San Jose, Santa Clara, Sunnyvale and Redwood City. He produced no evidence of the existence of these organizations, however, and no trace of them could be found despite diligent investigations on the part of our own agents and law enforcement agencies in the area. Robert DePugh has often declared that the organization had approximately 25,000 members, but as yet he has never offered any real evidence that they are anything

MINUTE MEN
EXHIBIT I

SOUTHERN CALIFORNIA
FREEDOM COUNCILS

Proudly Present

A major address by:

TROY HAUGHTON
Western U.S. Coordinator, Minutemen

TOPIC:

WHY THE MINUTEMEN ?

Knights of Columbus Hall
14450 Valerio Street
Van Nuys, California

August 14, 1964
8:00 P.M.
Donation: $1.00

For tickets: Poor Richards Bookshop
5403 Hollywood Blvd.
Los Angeles 27, Calif.

---

or tickets by mail from:
Southern California Freedom Councils
6685 Hollywood Boulevard
Hollywood 28, California
HO 6-7347

MINUTE MEN
EXHIBIT II

"MINUTEMEN"
P. O. BOX 68
NORBORNE, MISSOURI

February 25, 1964

Dear Friend:

I greatly appreciated your letters of February 18th, 20th and 21st. Also appreciated was the additional material and intelligence data.

I know that you realize from personal experience how difficult it is to operate efficiently with a continuous shortage of help and shortage of money.

Considering the difficulties we face, it would be a real accomplishment if all the people that think the way we do could, by close cooperation, develop a single headquarters that was really well equipped and well staffed. For individual groups here and there to do so is almost impossible.

It's my firm belief that we have made the greatest progress toward this end of the many groups which are attempting to do so. Its seems that the most efficient way of accomplishing an efficient central headquarters would be for other groups such as your own to help us succeed and thus receive the natural benefits of national coordination and efficiency. Your offer to make AVAC a Minutemen front is not only generous but sensible as well.

One of our biggest difficulties stems from the fact that we are all individualists and we have difficulty subordinating our respective schemes to an overall plan. Actually, it is not necessary to do this entirely in order to achieve the benefits of really close coordination.

In California we do have a large organization and in this regard Troy has done a good job. The difficulty here is that his groups is a constant drain on the national organization financially without contributing in any tangible way. Whereas most of us earn our livings in some other manner and use the total income from the organization to further its goals, Troy works at it full time and must of necessity take out enough money for he and his family to live on. He is so anxious to build his local organization that he sends out more material to his members than we can afford to nationally. Much of this material is contributed by the national organization and we don't even get back the cost of the paper.

more than essentially a paper organization with just enough followers over the country that they can occasionally make a headline somewhere, usually because of their preoccupation with the weapons of war. (*Los Angeles Times,* April 13, 1965.)

In 1967 Robert DePugh, Walter P. Peyson and Troy Haughton were arrested and charged with violating the Federal Firearms Act. DePugh was sentenced to serve two years in Federal Prison, and was given five years probation; Walter P. Peyson was sentenced to three years with three years probation, and Troy Haughton was sentenced to three years with no probation. All were released after having received their sentences in the United States District Court at Kansas City, Missouri, on $5,000.00 bond each, which deprived the organization of its leadership and dealt it a shattering blow from which it has not yet recovered. The membership has scattered and like members of the National States Right Party, affiliated with other and similar organizations.

American Nazi Party

Formed by George Lincoln Rockwell and four aides in 1959, this racist, activist movement set up a headquarters at Arlington, Virginia. Under Rockwell's guidance and because of his driving energy, it attracted young men who were drilled, armed, uniformed and sent out on parades and assignments against Negroes, Jews and Communists. This, in essence, was the creed of the American Nazi Party—hatred for racial minorities and an ambition to foster a white racist society in the United States. The magnetic personality of Rockwell lent itself well to his position as Fuehrer of this Party. He usually smoked a corncob pipe and his jut-jawed pictures inspired confidence in his strength and determination.

In our 1963 report we described the minor disturbances caused by some California members of the American Nazi Party at various meetings. But on the whole there was much more swaggering than action. The entire organization never amounted to more than a few hundred throughout the country, and no more than a hundred at the peak of its activity in California. The enrollment varied, of course, from time to time as money and enthusiasm fluctuated.

The publications and propaganda issued by the American Nazi Party carried, and still carry, the usual racist propaganda presented in an extremely lurid fashion. In 1967 the movement issued a slick magazine, lavishly illustrated and called the *Storm Trooper Magazine*. Printed on good paper, issued from Arlington, Virginia, this magazine appeared monthly and sold for 50 cents a copy or $2.00 a year. The lead piece in each issue was inevitably headed: "From the desk of the Commander," under a photograph of Rockwell in the upper right-hand corner of the page. The issue for summer 1967 carried the addresses of local units called "Storm Troops," as follows: Box 3980, Dallas, Texas; 4375 North Peck Road, El Monte, California; Box 5066, San Francisco, California; 1314 West Ohio Street, Chicago; 6150 Wilson Boulevard, Arlington, Virginia; Box 1363, Boston; Box 986, Oakland and Box 215, Route 3, Spottsylvania, Virginia."

There were some exceptions to the usually peaceful activities of the Nazi Party. During the 1967 Peace demonstrations in Oakland and San Francisco, units of the organization led by Rockwell, who made a special trip to the West Coast for the purpose, snatched at Viet Cong flags and engaged in trading punches with some of the demonstrators.

In August 1967 Rockwell was assassinated. His murderer, a former member of the organization named John Patler, was arrested, convicted and is now serving 20 years in the penitentiary. After the leader's death there was the inevitable rivalry for his position among several officers. But the struggle was unsettled until great breaches were driven through the group by cliques and desertions. In the columns of the official club publications, *Action Magazine* and the newspaper *Attack,* the power plays were reported in some detail—but the truth lies in reports from former members and from covert agents who managed to penetrate the organization.

In January 1969 a temporary headquarters was set up in California under the care of Allen Vincent at 227½ North Western Avenue, Los Angeles. Shortly before that time it had been situated at 4375 North Peck Road, El Monte. Even before Rockwell's murder there had been some abortive efforts to replace him. William E. Pattison of Van Nuys made the attempt in 1963, after having been

a member of the organization for three years. At that time Pattison estimated the California enrollment as 700, but 100 would have been nearer the mark. After Rockwell's death and because of the leadership struggle, which has not yet been settled, resignations and factionalism have withered the ranks almost to the vanishing point.

Mattias Koehl, Jr., now about 35, was second in command, and naturally assumed the leadership position after Rockwell's death. Ralph Forbes was in charge of the California organization, and his position was also coveted by others—and at the same time there was a drive to unseat Koehl by Dr. James K. Warner of California, who sent a form letter to the members and signed himself "White Power! Dr. James K. Warner, National Leader." Warner declared on page 4 of his letter that "in view of the incompetent leadership of the National Socialist White Peoples' Party, I, Dr. James K. Warner, assumed by popular Nazi acclaim the leadership of the American Nazi Party." He then preceeded to appoint the following officers: Allen Vincent, Deputy Leader and National Storm Troop Leader; George Carpenter, Storm Troop Leader from Southern California and National Secretary; Don Musgrove, Storm Troop Leader for Northern California; Don Anderson, Leader of State Security; Dick Norris, Deputy Leader of State Security; Paul Tronvig, Assistant Deputy Leader of State Security; Bart West, National Organizer; Bill Cummings, Secretary of Labor; Don Sisco, Party Spokesman, and Dave Lea, Party Treasurer.

As we shall shortly see, the preoccupation of security was of little avail, due in part to the carelessness that attended the operation of the California unit of the party, and perhaps in greater measure to the resourcefulness of the Subcommittee agent who visited the headquarters at 227½ North Western Avenue after the Warner takeover.

He found the California office to be situated in a two story white wooden structure, occupied by Mr. and Mrs. George Carpenter. The walls of the combined dining and living room were draped with Nazi flags, swastika banners and Nazi posters. There were abundant supplies of Nazi Party literature available, some which is reproduced herewith. Mrs. Carpenter bitterly attacked Ralph Forbes and Koehl, stating that the main "troop Bay," as

she termed it, was at James Warner's Glendale residence. Four male members of the Party were living at the Carpenter residence, Cummings, Vincent, Carpenter and an anonymous young man who lay on the floor sleeping throughout the entire interview and who was not, therefore, subject to recognition. On Tuesday, January 16, 1969 the Carpenters moved to a new address at the corner of Effie and Bates Street, Los Angeles.

The American Nazi meetings are usually held on Friday evenings at 8:00 P.M. at the Party headquarters or at one of the members' residences. Dues are $3.00 per month for adults, $2.00 for students and the membership fee is $5.00 per year. The membership is still pursuing its internal battles, which are as vigorous as its clashes with the minority groups and Communists it detests.

AMERICAN NAZI PARTY
EXHIBIT I

GEORGE LINCOLN ROCKWELL

January 11, 1965

[redacted]
Brigade Commander
[redacted]
La Puente, California

Dear Mr. [redacted]

Thank you so much for your long and most interesting letter of 30 December.

I heartily agree with much of what you say. However, I must point out that the biggest problem our country faces is LACK OF COURAGE!

Most people who are aware of the Jewish situation feel that they are "just too powerful" and that any effort to oppose them in the open is doomed to failure.

For this reason, it is my opinion that the most necessary thing is to defy the bastards in the wide open, to spit in their eyes and generally to make fools of them at every opportunity.

In combat, in World War II and Korea, I learned that people who will fight and are brave, will still not get up and go by themselves. You have to get up in front of them and give an heroic example to get them STARTED.

That, in my opinion, is our major problem.

The country is full of "patriots" who want to do everything else in the world except get out there where they might get "shot".

Perhaps I am wrong, but I believe that I must spend every ounce of my energy in heroic "charging" at the enemy, until the myth of Jewish invincibility is smashed to pieces.

In my opinion, the proliferation of organizations and leaders who preach "silent" and "secret" operations is a deadly danger, because it reinforces the myth of Jewish invincibility.

AMERICAN NAZI PARTY
EXHIBIT I—Continued

At the same time, I heartily agree that we need a sort of "underground" party.

Perhaps you and/or your associates are the men to lead such a movement.

There are several points in your letter with which I strongly disagree, but it would be impractical, and impossible, under the pressure I face here, to take them up in writing.

I suggest you visit me here, if possible, or I shall try to see you next time I get out to the West Coast.

In the mean time, if you are as sincere and dedicated as your letter would indicate, I suggest that you have somebody make secret contacts with Captain Forbes out there, in spite of any faults you may see, and help those poor bastards to the limit of your ability. They are really suffering and hard-pressed. They need help, not advice or criticism at this point.

If you know anyway to help them, for God's sake do so. When I get out there, I look forward to meeting you.

Until then,

For race and nation!

Lincoln Rockwell, Commander
American Nazi Party

LR/bvg

AMERICAN NAZI PARTY
EXHIBIT II

Phone: 462-0207

Temporary address:
c/o Major Allen Vincent
227½ N. Western Avenue
Los Angeles, Calif. 90004

January 1968

Fellow National Socialist:

The question before us today is this: Is the American Nazi Party going to win power in America, or is it just a game for a gang of overgrown children and petty Napoleons?

For the last few years the leadership of the ANP on the West Coast has been in the hands of incompetant individuals who have found the Party a profitable venture for selfish gain, a means of existing without working, and a way to express their illusions of grandeur. Those who have tried to build the Party have run into insurmountable obstacles thrown up by those who enjoy and profit by this miserable travesty on true National Socialism.

When the Party was launched in 1959, I was one of the five original members, and have been credited by Commander Rockwell with being the one individual who gave the Commander the encouragement to go ahead with organizing the American Nazi Party. In the Commander's words:

"Just about as I regained 'consciousness', James Warner, the young man who sent the Nazi flag, was discharged from the Airforce for his Nazi sympathies, and appeared at Louis' house ready to do what he could to advance Nazism.

"The fact that this young kid was ready to devote his life to our cause and to my leadership was the shock I needed to snap out of depression." (page 342, This Time the World).

I worked with Commander Rockwell through bad times and good, sharing his hardships, and fighting along beside him in the street. Later, because of political immaturity and lack of political knowledge, I broke with the Party, thinking that I had better ideas than the Commander. I did a lot of stupid, irresponsible rotten things that hurt the Party. However, the Commander and I came to terms in 1965, and the Commander wrote: "I am in hopes that by showing that Warner and I have been able to come to terms and, although he is not in the Party...we stand together against the enemy, after years of bitter and brutal quarrelling." (Rockwell Report, Feb., 1965).

In August, 1967, I was mainly responsible for organizing transportation for the Nazi Motorcycle Corps for the famous street action on August 6th, which made headlines nationwide.

The California "leader" (Ralph Forbes) was so engrossed with "family considerations," or so he claimed, that he just couldn't find the time, or the money in his treasury (his wife was his treasurer and wrote and kept all the records) to bring the men from Oakland to Los Angeles. Although not being a Party member, I did work

AMERICAN NAZI PARTY
EXHIBIT III

SMASH THE REVOLUTION!

Issued By The
NATIONALIST UNDERGROUND MOVEMENT

UNIVERSITIES

No useful purpose would be served by setting forth here the sickening recital of incidents of violence, destruction and disruption that has befallen our schools and colleges since the Berkeley rebellion of 1964. That account has been unfolded by news outlets day by day.

With the rise of the New Left and the resurgence of the Old Left, and the mass agitation and propaganda activity among our racial minorities and students, the rebellion continues to grow. Years ago, shortly after the Berkeley revolt, the late Lucius Beebe wrote that under conditions then existing at Berkeley, the faculty considered it an unusual day unless students staged a demonstration with tanks and flame throwers. But there were no buildings blown up in 1964, no violent attacks on administrators, and it was not considered proper for professors to indoctrinate their captive audiences with their own radical concepts. It was considered that these state-supported educational institutions were places for students to get an education, not indoctrination; where academic freedom was used as a protection against deviations from objective teaching, and not as a thin excuse for indoctrination. Before 1964 our schools were not allowed the indulgence of extra-curricular programs of on-campus harangues by the apostles of revolution, provided with public address systems and other facilities at the expense of taxpayers whose government they were attacking.

It would be difficult indeed to imagine organizations of students more open in their advocacy of the violent destruction of our way of life than Students for a Democratic Society, Progressive Labor Party, or the Young Socialist Alliance. Yet we witness the ridiculous spectacle of timid administrators granting official campus recognition to these defiant groups that surge out to wreak incalculable injury to our society.

There should be no resistance to proper academic changes. No doubt many are long overdue, but they are not achieved through destruction and violence. If there

are serious defects in our educational system, they should obviously be remedied, but in the meantime to tolerate a continuation of this contempt for authority, this program of studied violence and anarchy, is permitting it to do far more than destroy our buildings and injuring our people. It is also making us calloused to violence, tolerant of defiance, of classroom indoctrination and apprehensive of invading the sensitivity of radical elements in our schools. The sordid story of professors teaching by parading naked men and women before their classes, and of a student completing his Masters Degree requirements by making human statues engaging in acts of perversion should require no comment on our part. It is, of course, an indictment of our system of education and the people to whom it has been entrusted.

Our agents leave many campuses in disgust at the blatant revolutionary propaganda that has been allowed to permeate the atmosphere. In their conferences with security officers on campuses of State Colleges and our State University, they have discovered that many of the officers do not know one front organization from another, are provided with no system of inter-communication with facilities at other campuses, and are outrageously understaffed. The intimidation of administrators at many campuses is obvious, with the result that a great majority of students—unorganized and inarticulate—are being hampered in their pursuit of an education and forced to suffer continual disruptions that emanate from the highly organized and disciplined radical minority.

The Cleaver Course

An example of the dishonesty existing in some of our institutions was found at the Berkeley campus where, after considerable controversy, the Regents allowed Eldridge Cleaver to teach a course designated as Social Analysis 139-X, but without credit being given to the students who took it. Professor Sampson, of the Psychology Department, advised the 139-X students, however, that by a subterfuge and with his cooperation, they could evade the rule by enrolling in his class, 198, and receive credit for work done in the Cleaver course. He then molded and altered 198 to fit the situation by enrolling lower division students in this upper division course, by

admitting 34 students instead of a previous high of 6, by assigning letter grades instead of pass-fail grades and by conducting it as an independent study course.

After the 139-X students had followed this device, they were denied credit for 198 and immediately brought an action in the Alameda County Superior Court to force the University to give them credits. One student received a B plus and all the others received A's in the 198 course, but the Recorder's Office, following the Regents Mandate, refused to issue the credits officially. The petition was denied by the Court who resolved the case in favor of the Regents, and the decision declared that it had been Professor Sampson's practice to give credit in his courses for papers prepared for and credited in other courses. Indeed, some of the papers written in connection with the Cleaver course actually ante-dated the commencement course of 198. Said the Court: "If this practice was in fact limited to 139-X, *vis-à-vis* 198, the correctness of respondent's (The Regents) position would need little or no additional proof. On the other hand if such an incredible practice is on-going, it would seem to deserve close scrutiny by the University administration." (Memorandum of Decision, Case No. 391, 912, Superior Court, Alameda County, January 7, 1970.)

Bettina Aptheker Article

Bettina Aptheker wrote an article entitled "The Student Rebellion" that appeared in the March and April 1969 issues of *Political Affairs.* We have previously described this monthly magazine as the official ideological publication of the National Committee of the CPUSA, of which Bettina Aptheker is a member. Since Part II of this article deals with campus rebellions since 1964 as seen through the eyes of the Communist Party, and describes the leadership role to which it aspires, we have quoted from the article as follows:

> "There were two decisive events in 1964, which marked the first watershed for the movement. The first was at the Democratic Party National Convention in Atlantic City in the late summer of 1964. The second was the Berkeley Free Speech Movement in the Fall of 1964. This was the first *mass*

uprising on a college campus. It came as a direct result of the Civil Rights activities of the students the previous Spring. These two events exposed the corruption and degeneracy of established institutions to a very large number of people: the former, the character of the Democratic Party; the latter, the nature of the University and the class character of its governing board. It is at this juncture that many in the student movement concluded that radical change is a necessity if American Society is to deal with the crises it had apparently created."

* * * * * * *

"The growing obsession with tactics leads to a growing fascination with violence: an attempt to create a revolutionary atmosphere in lieu of a revolutionary situation. My first difference here is to assume the identity of revolution and violence. The second difference is that I think it romanticizes and distorts the revolutionary process. This is clearly illustrated by a series of demonstrations in Berkeley in June, 1968. A street rally was called in support of the French workers and students. The rally organizers deliberately refused to obtain a police permit for the rally in expectation of creating a student-police confrontation, in the attempt to transpose Paris to Berkeley. Of course the police invaded the rally. Barricades were set up and were set afire, etc., etc. Superficially, the newspaper pictures from Berkeley appeared identical with those from Paris, but no one can seriously contend that Berkeley was on the verge of revolution.

These kinds of tactics are extremely dangerous. One cannot 'play' with revolution. It is a serious business and the ruling class uses every mistake, every adventurous act, every ultra-Left binge as a whip to beat back the movement. Such acts play into the hands of the ruling class. Their lack of rational purpose isolates the Left from masses of people."

* * * * * * *

"The Student Rebellion is a tremendously important event in the historical development of a revolutionary movement, both because of the contemporary

character of American higher education, and because of the astounding ideological advancements of the students themselves. The New Left has shown a rare astuteness in its ability to draw upon experience, a fresh courage to break with clearly inadequate or incorrect theory, a steady dedication to build a movement capable of revolution.

At this moment there is an urgent need for ideological and political leadership in the Communist Party and from a Marxist-Leninist Youth organization." (*Political Affairs,* April, 1969, "The Student Rebellion, Part 2," by Bettina Aptheker. Page 12 at pages 13, 19, 23, 59.)

Dominant Role of Communist Party

With the rise of the New Left organizations there was a tendency for this new crop of young revolutionaries to ridicule the CPUSA as old, tired, and impotent. But it was also patient, experienced, disciplined and a part of a magnificently organized world movement. It had an ideology, and the younger groups had very little except a touch of Marxian philosophy, and a fanatic dedication to a Maoist do-it-yourself destruction mania. Then came the inevitable splits, with these young people spending hours arguing about matters of approach, technique, united and popular fronts, all of which the Communists had gone through years before. And while the New Left groups were fragmenting, split with factions and jealousies, power drives and competition with each other, the CPUSA was quietly infiltrating each, and either demolishing it from within through provocateur action, or bending it to the will of the Party.

Thus it infiltrated and split SDS until the remaining organization is actually playing the Communist game by serving as shock troops. The Black Panther Party, decimated by death and imprisonment, was barely afloat when new life was pumped into it by the Friends of the Panthers, a Communist front, new legal talent was drawn from the familiar pool of lawyers specializing in such cases, and bail money provided by other Communist fronts. And the Black Panthers also played the Communist game by taking the gunfire while their sponsors remained in the background giving advice. The Progres-

sive Labor Party, that little vicious group too radical for the CPUSA, has been split and reduced to a position of impotence in accord with the CPUSA line that we have heretofore described.

As J. Edgar Hoover said, the Party would like nothing better than to have us believe that it is both weak and inactive, but a writer well-versed in Communist strategies has written:

"Wherever there has been a vacuum in radical movements in the 20th Century, Marxism has filled that vacuum ideologically, and the Communist Party has filled it organizationally." ("The Communist Party and the New Left," by Frank S. Meyer. *National Review,* February 27, 1968, page 191.")

UNIVERSITIES
EXHIBIT I

Social Dynamics
Experimental Class

"On The Tactics and Practice of Guerilla Warfare at U.C.S.B. and in The Santa Barbara Community"
with Guest Lecturers

If you want to know what to do, this is your chance to participate!! The class will cover strategies and will hold drills.

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CLASS WILL MEET REGULARLY ON MON. WED. & FRI. AT 4 P.M. IN 2292 *

* FIRST MEETING WILL BE FRIDAY MARCH 7 IN 2292 at 4 P.M.

Be there!! Now is The Time To Stand In Front of Them and Show Them How Many of Us There Are!!

Lets have a Free University or No University

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